

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.12348 of 2016

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ORDER:
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The petitioner filed the present application under Section 438 of the Code of the Criminal Procedure (Cr.P.C.), seeking release in the event of his arrest in connection with un-registered crime of Mahila Police Station, Khammam.

The petitioners apprehend lodging a report by the wife of the 1st petitioner by name Atmakur Mamatha or any of her relatives against them in respect of matrimonial offences.

Though the present application is filed seeking anticipatory bail, learned counsel for the petitioners restricts his prayer seeking a direction to be given to the Investigating agency to follow the conditions stipulated in Section 41 of Cr.P.C. and also the judgment of the Hon'ble Apex Court in ***Arnesh Kumar v. State of Bihar and another***^[1], if the offences alleged against the petitioners are punishable for a term of less than seven years.

Section 41 Cr.P.C. reads as under:

When police may arrest without warrant.

- (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person –
 - (a) who commits, in the presence of a police officer, a cognizance offence;
 - (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without

fine, if the following conditions are satisfied, namely:-

- (i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;
- (ii) the police officer is satisfied that such arrest is necessary-
 - a) to prevent such person from committing any further offence; or
 - b) for proper investigation of the offence; or
 - c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
 - d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or
 - e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,and the police officer shall record while making such arrest, his reasons in writing;

(Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.)

In ***Arnesh Kumar v. State of Bihar and another***, the Apex Court held as under:

- 1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 Cr.P.C.
- 2) All police officers be provided with a check list containing specified sub-clauses under Section 41 (1) (b) (ii);

- 3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;
- 4) The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;
- 5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;
- 6) Notice of appearance in terms of Section 41 A of Cr.P.C. be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;
- 7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of Court to be instituted before High Court having territorial jurisdiction.
- 8) Authorising detention without recording reasons as aforesaid by the Magistrate concerned shall be liable for departmental action by the appropriate high court.

The Apex Court also held that “ the directions aforesaid shall not only apply to the cases under Section 498-A of the IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.”

In view of the above, the investigating agency is directed to scrupulously follow the conditions stipulated under Section 41 of Cr.P.C. and also the direction issued by the Apex Court in the judgment referred to above, before taking any coercive steps against the petitioners.

With the above direction, the Criminal Petition is disposed of. Miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE C. PRAVEEN KUMAR

Date:24.08.2016
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[\[1\]](#) 2014 (2) ALT (Cri.) 457 (SC)