

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.54262 of 2018

Arising Out of PS.Case No. -537 Year- 2016 Thana -KHAGARIA COMPALINT CASE District -
 KHAGARIA

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1. Rani Devi, W/o Suryanarayan Mandal,
 2. Suryanarayan Mandal S/o Late Bindeshwari Mandal,
 3. Ravi Kumar @ Brajesh Kumar S/o Surya Narayan Mandal,
 4. Guriya Kumari D/o Suryanarayan Mandal,
 5. Ansu Kumari D/o Suryanarayan Mandal,
 6. Sadanand Mandal S/o Late Bindeshwari Mandal,
 7. Dinesh Mandal S/o Late Basudeo Mandal,
 8. Jantri Mandal S/o Late Anirudh Mandal, All are the R/o Vill./Mohalla-
 Bhatauni, P.S.- Purainin, Distt.- Madhepura.

.... Petitioner/s

Versus

1. The State of Bihar.
 2. Manju Devi, W/o Prakash Mandal, R/o Vill.- Govindpur, P.S.-
 Maheshkhunt, Distt.- Khagaria.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Swapnil Kumar Singh-Advocate
 For the Opposite Party/s : Mr. Anil Prasad Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

02 20-09-2018 Heard learned counsel for the petitioners as well as
 learned Additional Public Prosecutor.

It happens to be a case under Section 498A I.P.C.
 along with other allied Sections of the I.P.C. on account of marital
 discord in between the daughter of the complainant with her
 husband Dhruv Kumar, who is not the petitioner. There happens to
 be no reason of apprehension of arrest by the petitioners, more
 particularly in the background of the fact that I.O. has not taken
 recourse in terms of direction so laid down by the Hon'ble Apex



Court in *Arnesh Kumar vs. State of Bihar and another reported in 2014(3) P.L.J.R. 314 (SC)*. For better appreciation, Paras-12 and 13 are quoted below:-

“12. We are of the opinion that if the provisions of [Section 41, Cr.PC](#) which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in [Section 41 Cr.PC](#) for effecting arrest be discouraged and discontinued.

13. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

(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.PC;

(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 authorising 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 authorise 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 41A of Cr.PC 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 judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.”

This petition is disposed of in terms thereof.

(Aditya Kumar Trivedi, J)

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