

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53838 of 2018

Arising Out of PS.Case No. -136 Year- 2018 Thana -PURNEA SADAR District- PURNIA

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1. Dinesh Thakur, Son of Late Chhanguru Thakur @ Late Chhangur Thakur.
 2. Subodh Thakur, Son of Late Chhanguru Thakur @ Late Chhangur Thakur.
 3. Kunj Bihari Thakur, Son of Late Chhanguru Thakur @ Late Chhangur Thakur.
 4. Mukesh Thakur, Son of Dinesh Thakur.
 5. Deepak Thakur, Son of Subodh Thakur.
 6. Fulwati Devi @ Ful Devi, Wife of Dinesh Thakur, all R/o Village Israil, P.S.- Muffasil, District- Purnea.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Dr. Bidhu Ranjan-Advocate

For the Opposite Party/s : Mr. Rajendra Singh Shastriji-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

02 12-09-2018

Heard learned counsel for the petitioners as well as learned Additional Public Prosecutor.

Instant case has been registered under Sections 147, 148, 149, 323, 354, 384, 504, 506, 379 of the I.P.C. All the offences whereunder case has been registered speak about less than or upto seven years of punishment.

That being so, the finding so recorded by the Hon'ble Apex Court in *Arnesh Kumar v. State of Bihar and another reported in 2014(3) P.L.J.R. 314 (SC)* is found squarely covering the same. For better appreciation Paragraph-13 thereof, is quoted below:-

“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.

Accordingly, instant petition is disposed of in terms thereof.

(Aditya Kumar Trivedi, J)

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