

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53824 of 2018

Arising Out of PS.Case No. -88 Year- 2018 Thana -PATEPUR District- VAISHALI(HAJIPUR)

=====

1. Harendra Rai, S/o Late Bipat Rai, Resident of Village Sahpur Buzurg,
P.S. Patepur, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Manish Chandra Gandhi-Advocate

For the Opposite Party/s : Mr. Bhanu Pratap Singh-A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

02 12-09-2018

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

This case has been registered under Sections 341,
323, 354B, 504, 506, 379/34 of the I.P.C. Section 354B of the
I.P.C. prescribes sentence upto seven years and in likewise
manner, Section 506 of the I.P.C., in case the threat to be to cause
death or grievous hurt upto seven years. That being so, the matter
is found squarely covered under the principle laid down 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)*. For better
appreciation Paragraph-13 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.

The learned Sessions Judge is expected to have proper appreciation on that very score while entertaining a petition for an anticipatory bail.

(Aditya Kumar Trivedi, J)

Vikash/-

U		T	
---	--	---	--

