

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53987 of 2018

Arising Out of PS.Case No. -29 Year- 2018 Thana -BAGENGOLA District- Buxar

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1. SHEO JEE YADAV @ SHIVAJI SINGH, SON OF LATE DAROGA YADAV,
 2. SATYANARAYAN YADAV, SON OF LATE HEERA YADAV,
 3. BIRABAL YADAV, SON OF HARI YADAV,
- ALL RESIDENT OF VILLAGE- KAITHI DERA, P.S.- BAGEN GOLA,
DISTRICT- BUXAR.

.... PETITIONER/S

VERSUS

THE STATE OF BIHAR

.... OPPOSITE PARTY/S

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Appearance :

For the Petitioner/s : Mr. Bachan Jee Ojha, Adv.

For the Opposite Party/s : Mr. Ataur Rahman, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 20-09-2018

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

At an earlier occasion while considering prayer for anticipatory bail relating to other co-accused, the plea having raised on behalf of petitioners was considered in the background of principle laid down by the Hon'ble Apex Court in ***Arnesh Kumar v. State of Bihar & another*** reported in ***2014(3) P.L.J.R. 314 (SC)***. The aforesaid judgment has been subject to consideration by the three Judges Bench of the Apex Court in ***Social Action Forum for Manav Adhikar vs. Union of India Ministry of Law and Justice and Others***, Writ Petition (Civil) No.73 of 2015 with Criminal Appeal No.1265 of 2017, Writ Petition (Criminal) No.156 of 2017, though the matter was relating to Section 498A of the IPC however, the finding so recorded under ***Arnesh Kumar*** (supra case) has been affirmed. Para-13 of the ***Arnesh Kumar*** (supra) is the



direction given by the Apex Court and is accordingly incorporated 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.



That being so, it is expected at the end of the Investigating Officer to proceed in terms thereof, and with the aforesaid finding, instant petition for anticipatory bail is disposed of.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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