

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53682 of 2018

Arising Out of PS.Case No. -59 Year- 2018 Thana -AMBA District- AURANGABAD

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1. Upendra Mehta, Son of Ganouri Mehta,
 2. Bhola Mehta, Son of Jagbali Mehta.
 3. Ganesh Mehta, Son of Late Jagu Mehta.
 4. Madan Rajak, Son of Suresh Rajak
 5. Subhash Kumar Rajak @ Subhash Rajak
 6. Dharmendra Rajak, Son of Arun Rajak
 7. Ramroop Mehta, Son of Sudheshwar Mehta.

All resident of Village- Kishunpur, P.S. Amba, District- Aurangabad.

.... Petitioner/s

Versus

The State of Bihar Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Binod Kumar Pandey, Adv.
For the Opposite Party/s : Mr. Dr. Kumar Uday Pratap, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 12-09-2018 Heard learned counsel for the petitioners as well as
learned Additional Public Prosecutor.

Without diverting to the merit of the case and giving any kind of observation thereto, it is apparent from the perusal of the FIR that case has been registered under Sections 447,448,34,341,323,504,379,308 of the IPC. The graver offence happens to be 308 IPC whereunder sentence is prescribe for seven years, fine or with both.

After amendment of section 41 of the Cr.P.C. whereunder, the arrest of the accused relating to an offence punishable up to seven years has been made distinguishable than other severe offence presenting severe punishment as per Section 41(i)(b), the Investigating Officer was expected to follow the same as has been directed by the apex court in **Arnesh**



Kumar v. State of Bihar & another reported in **2014(3) P.L.J.R. 314 (SC)** which has also been considered at an earlier occasion by this Bench under Criminal Miscellaneous No.35261 of 2014 along with Criminal Miscellaneous No.35265 of 2014 and vide order dated 06.04.2015, reiterating the relevant passage lastly under para-13, para-13 of **Arnesh Kumar** (Supra) wherein it has been held:

“13. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorize 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) Authorizing detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.”

In light thereof, instant petition is disposed of.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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