

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (Crl.) 2727/2019**

% ***Date of decision: 23rd January, 2020***

ANURADHA GOYAL

..... Petitioner

Through: Mr. R.P.S. Bhatti, Advocate.

versus

THE STATE OF DELHI

..... Respondent

Through: Mr. Piyush Singhal, Advocate
for Mr. Ashish Aggarwal, ASC for the State
with SI Jatan Singh and W/ASI Munni Khan
PS MS Park.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J (ORAL)

1. By way of the present petition filed under Section 482 Cr.P.C., petitioner is seeking directions to respondent no. 2 to arrest all the accused persons in case FIR No. 302/2019 under Sections 323/341/354-B/506/509/34 IPC registered at Police Station Mansarovar Park, Delhi.

2. Brief facts of the case as per FIR dated 21.08.2019 are that on 20.08.2019 at about 7:30 p.m. petitioner/complainant had left her house along with her husband, namely, Amit for going to Ram Nagar. They were going by rikshaw and when they reached near fly over of Nathu Colony, four men came from back side on two motor bikes and they stopped the petitioner and her husband. According to the complainant, one of them was Rajinder Sharma and his son Arun

Sharma. The four men started beating complainant with bricks and blows and gave filthy abuses. Rajinder Sharma tore her clothes and his son Arun Sharma held her and other two persons pulled her hairs. Rajinder Sharma held her body and his son molested her and threatened to kill her and then they ran away. As per the complaint the reason behind the incident was that the husband of the petitioner had got booked building of Rajinder Sharma from MCD due to which on 14.08.2019 Delhi Jal Board had cut off the water supply of the said building. Statements of the petitioner and her husband were recorded under Section 161 Cr.P.C.

3. I have heard learned counsel for the petitioner, learned ASC for the State and have perused the status report.

4. As per the status report, notice under Section 14(A) Cr.P.C. was served upon Rajinder Sharma and his son Arun Sharma to join investigation on 24.08.2019 and they were interrogated in the present case. The statement under Section 164 Cr.P.C. of the complainant/petitioner was recorded before the learned Metropolitan Magistrate. CDR and locations of the mobile phones of the complainant and accused persons were obtained from the concerned telecom companies and the relevant CCTV footage were also collected. The relevant portion of the status report is reproduced as under:-

“During investigation whenever the alleged persons were called, they came and joined the investigation. During interrogation alleged Rajinder Sharma and his son Arun Sharma

have stated that at the time of incident they were present at their home i.e. at H.No. 1/3556, Ram Nagar, Shahdara, Delhi and they did nothing as alleges by the complainant. In this regard they have provided some CCTV Footages and the same were taken in police possession through seizure memo and sent to FSL, Rohini for examination. The CCTV Footage was examined and it was noticed that at the time of incident the alleged Rajinder Sharma and his son Arun Sharma were present at their home.

On 24.08.2019, alleged Rajinder Sharma and his son Arun Sharma have joined investigation and interrogated in the present case. Both the accused persons have been bound down in the present case. Investigation of the case is in progress.”

5. It is not that in every case the police has to necessarily arrest the accused persons. The Hon’ble Supreme Court in the case titled as ***Arnesh Kumar Vs. State of Bihar, AIR 2014 SC 2756*** has held as follows:

“Code of Criminal Procedure, 1973 (Central Act 2 of 1974)- Section 41 power of police to arrest without warrant--Police Officer has to record reasons in writing which led him to conclude that the accused is liable to be arrested without warrant--Directions issued to ensure that Police Officer do not arrest the accused unnecessarily and Magistrate do not authorize detention of citizen, casually and mechanically. Petitioner, apprehending arrest in a case under Section 498A of the Penal

Code and Section 4 of the Dowry Prohibition Act, 1961, moved for anticipatory bail, which was rejected. He approached the Supreme Court seeking anticipatory bail. The court expressed dismay at the casual manner in which husband and his relatives are arrayed as accused in an indictment under Section 498A and Section 4 of the Dowry Prohibition Act, 1961. Apex Court pointed out that the casual manner in which accused in such cases are arrested and remanded to judicial custody. Emphasizing that the Police and the Magistrates should be more circumspect in arresting the accused without warrant and in committing them to judicial custody, Apex Court issued a series of directions and; Held: 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.P.C.; (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.P.C. 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. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498 A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

5. The petitioner has joined the investigation and has been interrogated by the Investigating Officer. No recovery of any sort is to be made from them. In these circumstances, the petition lacks merits and the same is hereby dismissed.

RAJNISH BHATNAGAR, J

JANUARY 23, 2020/AK

