

Item No.05

Ct.42

CRM (SB) 30 of 2022

And

Mr. Rajdeep Mazumder
Mr. Pritam Roy
Ms. Arushi Rathore
...for the petitioner

Mr. Saibal Bapuli, Ld. A. P. P.
Mr. Bibaswan Bhattacharya
..for the State

The petitioner is an Assistant Sub-Inspector of Police. He was arrested on the basis of a complaint submitted by the de facto complainant for outraging her modesty within the meaning of Section 354 of the Code of Criminal Procedure. Praying for bail it is submitted by Mr. Rajdeep Mazumder, learned advocate on behalf of the petitioner that the Arresting Officer blatantly violated the direction of the Hon'ble Supreme Court issued in **Arnesh Kumar versus State of Bihar and Another** reported in **(2014) 8 SCC 273**. It is also submitted by Mr. Mazumder that Section 41 A (1) mandatorily states that the police

officer shall, in all cases where the arrest of a person is not required under the provision of Sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

It is further submitted by Mr. Mazumder that the Hon'ble Supreme Court issued certain guidelines in paragraph 11 under 11.1 to 11.8.

In paragraph 12 the Hon'ble Supreme Court observed:-

"12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC 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."

Thus, according to Mr. Mazumder, the guideline of **Arnesh Kumar** (supra) is applicable also in a case under Section 354 of the Indian Penal Code.

Mr. Mazumder also submits that the accused is in custody for about 79 days. Investigation is over. Charge sheet has been submitted. The case is otherwise ready for commitment. At this stage further detention of the

petitioner is not necessary. It is also submitted by Mr. Mazumder that non-compliance of the directions of **Arnesh Kumar** (supra) is a flagrant violation of Article 21 of the Constitution. In support of his contention he also refers to the decision of the Apex Court in the case of **Rini Johar and Another versus State of Madhya Pradesh and others** reported in **(2016) 11 SCC 703**.

Learned P.P.-in-Charge, on the other hand, submits that the petitioner being an A.S.I. is an influential person. If he is granted bail, trial of the case will affect. It is also submitted by the learned P.P.-in-Charge on production of relevant pages in the case diary that there is sufficient material in the case diary that shows direct involvement of the petitioner in the offence committed upon the de facto complainant.

In a nutshell the case of the de facto complainant is that on 11.12.2021 at about 1 A.M. she got down from a bus at Karunamoyee Bus Stand in Salt Lake. When she was searching for a taxi, the petitioner and co-accused came before her riding on a motorcycle. They told the petitioner that at the wee hours of night she would not get any Cab from Karunamoyee. She might get a Cab at Ultadanga and the petitioner and the co-accused offered her lift to Ultadanga saying that they are police personnel and she had nothing to fear of them. The petitioner sat in the middle of the seat of the motorcycle in between the

motorcycle rider and another person whose identity subsequently revealed as a Civil Volunteer. While driving the motorcycle the petitioner and the said Civic Volunteer touched the de facto complainant inappropriately in order to outrage her modesty. Subsequently she was dropped near Mani Square Mal at Eastern Metropolitan Bypass.

If the provision of Section 41A is read carefully, the crux of the said provision is found to be applicable where the arrest of a person is not required under the provision of Sub-section (1) of Section 41. Therefore, this subjective consideration of the Investigating Officer where the arrest of a person is not required. **Arnesh Kumar** (supra) never directed that in all cases where the punishment is up to seven years of imprisonment, the accused cannot be arrested. In respect of such offence if the Investigating Officer is of the view that the offender is not required to be arrested, the guideline prescribed by the Hon'ble Supreme Court in **Arnesh Kumar** (supra) is applicable. It is true that in case of arrest of a person in such offence, paragraph 11.2 of **Arnesh Kumar** (supra) "All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii) of the Code.

Section 41(1)(b)(ii) of the Code states "the police officer is satisfied that such arrest is necessary-

- (a) to prevent such person from committing any further offence; or
- (b) for proper investigation of the offence; or
- (c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
- (d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or
- (e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

[Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.];”

On perusal of the case diary it is found that Investigating Officer has filed a check list along with the arrest memo of the accused before the learned Magistrate at the time of his production. It is submitted by Mr. Mazumder that the said check list is not in compliance of Section 41(1)(b)(ii) of the Code because of the fact that the said report /check list was

not made in Government prescribed form. On perusal of the said check list I find that the requirement of Section 41(1)(b)(ii) of the Code is complied with.

Now, comes the question as to whether the accused is entitled to bail when the charge sheet is filed and the case is at the stage of commitment.

In the check list under Section 41(1)(b)(ii) of the Code it is found that the Investigating Officer raised objection against the prayer for bail on the ground that the petitioner is an official person. The petitioner is an A.S.I. of police attached to Bidannagar Traffic Guard. In the instant case there are number of witnesses who are the members of police force. Being the police officer it is presumed that he can influence the witnesses at the time of trial if he is bailed out.

Considering such aspect of the matter, I am not inclined to release the petitioner on bail. The prayer for bail is, thus, considered and **rejected** at this stage till commitment of the case and examination of the victim girl by the Court below.

The application is, thus, disposed of.

(Bibek Chaudhuri, J.)

