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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 15 OF 2018

Archana Rupwate	.. Petitioner
Vs.	
The State of Maharashtra & Ors.	.. Respondents

Ms. Aditi Saxena for Petitioner
Mrs. A.S. Pai, PP for State

**CORAM : A.S. GADKARI &
MILIND N. JADHAV, JJ.**

DATE : 12th SEPTEMBER 2022.

P.C.:

. By the present Petition, Petitioner has prayed for the following reliefs:

“(a) That this Hon’ble Court be pleased to issue a writ of mandamus and/or any other writ order or direction in the nature of Mandamus, to the State Government to issue directions to various Police Stations and Magistrates in the State of Maharashtra, on compliance of section 41 and 41A of the Criminal Procedure Code for arrest of a person.

(b) That this Hon’ble Court be pleased to issue a writ of mandamus and/or any other writ order or direction in the nature of Mandamus, to the State Government for the release of 642 no. of undertrials as set out in EXHIBIT B who have been granted bail but continue to languish in prison because of the inability to furnish surety due to their socio-economic condition.

(c) That this Hon’ble Court be pleased to issue a writ of mandamus and/or any other writ order or direction in the nature of Mandamus, to direct the State Government to issue directions to all Police Stations and Courts in the State of Maharashtra, on compliance of section 436 for release of arrested persons who is unable to furnish bail within a week of the date of his arrest, to be presumed that he is an indigent person and discharge him on his executing a bond without sureties for his appearance.

(d) That this Hon’ble Court be pleased to issue a writ of mandamus and/or any other writ, order or direction in the nature of Mandamus, to direct the State Government to notify

the Police Stations and Court to prioritise releasing an arrested person on personal bond without surety or cash bond considering their financial condition with regard to non-bailable offences.

(e) That this Hon'ble Court be pleased to issue a writ of mandamus and/or any other writ order or direction in the nature of Mandamus, to direct the State Government to conduct training programs for the Police Officers and Courts to prioritise releasing an arrested person on personal bond without surety or cash bond considering their financial condition with regard to non-bailable offences and execution of section 41 and 41A of Cr.P.C. ”

2. We have heard Ms. Aditi Saxena, learned Advocate for Petitioner and Ms. A.S.Pai, learned P.P. for the State.

3. It is seen that the Supreme Court has passed specific directions in respect of the cause of action agitated in the Petition in its Judgment and Order dated 02.07.2014 passed in Criminal Appeal No. 1277 of 2014 in the case of ***Arnesh Kumar v/s. State of Bihar and Anr.***¹ For convenience the relevant directions issued by the Supreme Court are reproduced below:

“We are of the opinion that if the provisions of Section 41, Cr.PC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.PC for effecting arrest be discouraged and discontinued.

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

¹ (AIR 2014 SC 2756/(2014) 8 SCC 273

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.

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.

We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance.”

4. Once the aforesaid directions have been issued by the Supreme Court and more specifically directing the copy of their judgment to be forwarded to the Chief Secretary as also the Director General of Police

of all State Governments and Union Territories and High Courts for ensuing compliance, we fail to understand as to what further writ or order can be passed by us as demanded by the Petitioner for the same cause of action. Hence reliefs sought in prayer clauses (a) and (c) cannot be sustained.

5. In so far as reliefs sought in prayer clauses (b), (d) and (e) are concerned, Petitioner has approached this Court on the presumption that, the directions and guidelines issued by the Hon'ble Supreme Court in the case of *Arnesh Kumar Vs. State of Bihar & Anr.* (*supra*) have not been complied with. It also proceeds on the premise that, about 642 under-trial prisoners are detained without following the said guidelines and even after they have been released on bail under Orders of various Courts, for want of submitting sureties on their behalf, they are still languishing behind bars.

6. At the outset, we must note that, the presumption under the law is that, the directions issued by the Hon'ble Supreme Court are being complied with and the presumption cannot be otherwise. Not a single instance is shown to us that, out of the 642 accused, that even in one case the said guidelines have not been complied with by the concerned authorities while arresting or detaining the prisoner in jail. The grounds raised in the Petition are qua arrest of a person, grant of bail and bonds, pre-trial detention and applicability of Article 21 and Article 14 to an arrested person. The grounds are stated in a general

context and are not case specific. Reading of the grounds reveal that Petitioner is seeking directions for executing the guidelines issued by the Supreme Court in the case of *Arnesh Kumar* (supra). The guidelines issued by the Supreme Court cover the issue sought to be agitated by the Petitioner and hence we do not find any merit in the grounds. The grounds as raised in the Petition indicate that, Petitioner wants this Court to further interpret the decision of the Hon'ble Supreme Court in the case of *Anresh Kumar* (supra) which is not tenable in the eyes of law. The Petitioner is unable to point out to us the basic fact that, how the present Petition concerns with public interest in releasing all the accused persons in a crime which is not beneficial to the public at large.

7. After taking into consideration the pleadings in the Petition and its course, we were in fact proceeding to impose exemplary costs on the Petitioner, however at the profused pleadings and request of the learned Advocate for Petitioner, we refrain ourselves from doing so.

Petition is accordingly dismissed.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]

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by RAVINDRA
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