

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

109

**CRM-M-29277-2022
Date of Decision: 12.07.2022**

HARMANJIT SINGH BAJWA

...PETITIONER

Versus

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Amrinderjit Singh Sandhu, Advocate
for the petitioner.

Mr. Harpreet Singh Multani, AAG, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner is inculpated by the respondents concerned, in complaints, which are respectively appended as Annexures P-5, P-7, P-9, and, P-10 with the petition. Therefore, the petitioner rears an apprehension that he is likely to be put to harassment, and humiliation, or, is likely to be unnecessarily arrested rather in a casual, and, mechanical manner, hence by the police agency concerned.

2. The learned Counsel for the petitioner, makes an argument, rested upon paragraph 13 of the verdict of the Hon'ble Apex Court, rendered in case 'Arnesh Kumar Vs. State of Bihar and another, verdict whereof, became rendered in Criminal Appeal No. 1277 of 2014, wherein, the

Hon'ble Apex Court, to ensure that the arrest of the offenders concerned, is not made in a casual, and mechanical manner, and, also rather it being avoided to be made, in case the arrest is completely unnecessary, rather has carved the hereinafter extracted principles.

“(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.”

3. Nonetheless, in paragraph 14 thereof, paragraph whereof

becomes extracted hereinafter, the hereinafter enumerated exceptions thereto are carried.

14. 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.

4. The exceptions (supra) to the guidelines/safeguards in paragraph 13, do candidly articulate, qua in respect of those cases where punishment is extendable for a term, which is more than seven years, and or, which may extend beyond seven years, whether with, or, without fine, thereupon, the safeguards (supra), as provided to the alleged offender concerned, are not permissible, to be available to him.

5. The prayer made, in the petition for the leveraging qua him, the safeguards, as enshrined in paragraph 13, as carried in the verdict (supra), are directed to become accorded to him, yet only after the strictest compliances by all concerned, being meted to the principles enshrined in paras (supra), and, with a firm condition, that the offences in respect thereof, the above safeguards, rather, become rather asked, do not obviously, entail the awarding(s) of punishment of imprisonment, for a term which is beyond seven years.

6. With the above conditional directions, the petition is disposed of, and, the respondents concerned, are directed to bear them in mind, before proceeding to make a conclusion, about the necessity of providing to

the petitioner the safeguards (supra), as become carried in paragraph 13, and, 14, in the verdict (supra), as made by the Hon'ble Apex Court.

(SURESHWAR THAKUR)
JUDGE

12.07.2022
kavneet singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No