

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

**COCP-2475-2023 (O&M)
Date of decision: 18.08.2023**

Rakesh Kumar Chaudhary

... Petitioner

Vs.

Pritpal Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Tushan Rawal, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (ORAL)

The petitioner alleges violation of the order dated 02.07.2014 passed by the Hon'ble Supreme Court in **SLP (Crl.) No.9127 of 2013 (Arnesh Kumar Vs. State of Bihar and anr.)**.

Learned counsel for the petitioner submits that initially, FIR No.6 dated 25.01.2022 under Section 379 IPC, Sections 21(1), 4 (1) of Mines and Minerals (Regulation of Development) Act and Sections 32 & 33 of Forest Act was registered at Police Station Chamkaur Sahib, District Rupnagar against the petitioner. It is further submitted that during the investigation, certain more Sections 7, 13(1)(a) read with Section 13(2) of PC Act and Section 120-B IPC were added, as there is no public servant is involved and without following the procedure under Sections 41/41-A Cr.P.C., the respondent is trying to arrest the

petitioner. It is also submitted that this petition be disposed of with a direction to the respondent to follow the procedure as laid down by the Hon'ble Supreme Court in **Arnesh Kumar's** case (supra), wherein the following directions were issued: -

“(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.”

Accordingly, this petition is disposed of with a direction to the respondent to strictly follow the aforesaid directions issued by the Hon’ble Supreme Court.

[ARVIND SINGH SANGWAN]
JUDGE

18.08.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No