

2023:PHHC:141514

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

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CRM-M-50359-2023

Date of decision : 03.11.2023

Inderjit Singh

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. R.P. Dhir, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

PANKAJ JAIN, J. (Oral)

1. Short reply by way of affidavit of Palwinder Singh, PPS, Deputy Superintendent of Police, Sub-Division City, Hoshiarpur on behalf of the respondent-State has been filed. The same is taken on record.
2. This is the petition filed under Section 438 Cr.P.C. wherein the petitioner prays for grant of pre-arrest bail in FIR No.98 dated 27.06.2023, registered for offences punishable under Sections 380 and 454 of IPC at Police Station Sadar, District. Hoshiarpur.
3. Counsel for the petitioner at the outset submits that keeping in view the fact that the punishment prescribed is less than seven years, the matter would be covered by provision as contained under Section 41-A of IPC and in case the petitioner is required, the authorities have to comply with Section 41-A of IPC.

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4. Faced with the situation, State counsel submits that in case the custody of the petitioner is required, definitely the agency would be under legal obligation to comply with the mandatory provision as contained under Section 41-A of the Code and as interpreted by the Appellate Court in case of *Arnesh Kumar vs. State of Bihar and another 2014 (8) SCC 273*, holding as under:-

“13. 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 498A 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;

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- (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.”

5. Disposed off, accordingly.

(PANKAJ JAIN)
JUDGE

03.11.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No