

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7982 of 2024

Arising Out of PS. Case No.-67 Year-2022 Thana- MAHILA P.S. District- Saharsa

Ajay Prakash, S/O- Ashok Kumar Paswan, R/O- Village- Shankarthua, P.S.-
Mahishi (JALAI O.P.) Dist.- Saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ramjanki Kumari @ Annu, W/O- Ajay Prakash, R/O- Mohalla- Kalenar
Patnagar Tola, Jagannathpur, P.S.- Hasanpur, Dist.- Saharsa.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shiva Shankar Sharma, Advocate

For the Opposite Party/s : Md. Nazir Ansari, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

2 22-02-2024 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

02. In the present case, the petitioner is apprehending his arrest in connection with Mahila P.S. Case No. 67 of 2022, registered for the alleged offence under Sections 341, 323 498(A), 504 and 506 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

03. Learned counsel for the petitioner submits that there is dispute over marriage and the petitioner has been given benefit of Section 41A of the Criminal Procedure Code.

04. The Hon'ble Apex Court in the case of *Arnesh Kumar v. State of Bihar*, reported in (2014) 8 SCC 273 [Para-



11] and recently in the case of ***Mohd. Asfak Alam v. State of Jharkhand***, reported in (2023) 8 SCC 632, issued following directions in order to ensure that police officers do not arrest the accused unnecessarily and Magistrates do not authorize detention casually and mechanically:

“11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. 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;

11.5. 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;

11.6. Notice of appearance in terms of Section 41-A CrPC 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;

11.7. 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 the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.”

05. In the light of aforesaid directions of the Hon’ble Supreme Court in the case(s) of *Arnesh Kumar & Mohd. Asfak Alam* (supra), there is no apprehension of arrest to the petitioner and, therefore, this petition could not be entertained at this stage.

06. Accordingly, the present petition stands disposed of.

(Arun Kumar Jha, J)

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