

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16750 of 2024
In
CRIMINAL MISCELLANEOUS No.50381 of 2022

Arising Out of PS. Case No.-164 Year-2022 Thana- ROSERA District- Samastipur

Subhash Kumar son of Dharam Raj Mandal @ Dharam raj singh resident of
Village- Dahiya, P S.- Hathauri, (Shivaji Nagar O.P.), District- Samastipur.
... .. Petitioner/s

Versus

1. The State of Bihar.
2. Puja Kumari D/o Baijnath Mandal R/o vill-Fatehpur, P.S-Rosera, Distt.-
Samastipur.
... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vasant Vikas, Advocate
For the Opposite Party/s : Mr. Anant Kumar 1, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 19-04-2024 Heard Mr. Vasant Vikas, learned Counsel appearing
on behalf of the petitioner and Mrs. Kanak Verma, learned APP
appearing on behalf of the State.

2. Learned counsel appearing on behalf of the
petitioner seeks to withdraw the present application, considering
the fact that he will avail remedy in accordance with Section
41(1) Cr.P.C.

3. The Apex Court in the Case of *Arnesh Kumar v.*
State of Bihar, (2014) 8 SCC 273, has laid down guideline in
dealing with the matter of unnecessary arrest in cases under
Section 498A IPC. It held as follows:-

*“10. We are of the opinion that if the provisions
of Section 41 CrPC 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 CrPC for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

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;”

4. Recently in the case of **Asfak Alam Vs. State of Jharkhand & Anr.** in **Cr. Appeal No.2207 of 2023** issued a directive to circulate circulars, notifications and instructions aimed at ensuring strict adherence by police authorities and criminal courts to follow the guidelines laid down by the Apex Court in **Arnesh Kumar case (Supra).**

5. In view of the aforesaid principle of law laid down by the Hon’ble Supreme Court, the petitioner has remedy under Section 41(1) Cr.P.C.

6. Accordingly, the bail application stands disposed of.

(Purnendu Singh, J.)

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