

19
10.07.2024
d.p.

**In The High Court At Calcutta
Constitution Writ Jurisdiction
Appellate Side**

W.P.A. 10269 of 2024

**Rohan Roy
-versus
The State of West Bengal & Ors.**

**Mr. Rohan Roy.
...Petitioner in person.**

**Mr. Amitesh Banerjee, Ld. SSC,
Mr. Tarak Karan.
...For the State.**

Perused the report filed by the Investigating Officer dated 10th July, 2024.

The grievance of the petitioner is that he was arrested in connection with offences carrying maximum punishment of imprisonment of less than seven years without issuance of notice under Section 41A CrPC in violation of the guidelines laid down by the Hon'ble Supreme Court in the matter of Arnesh Kumar -vs- The State of Bihar.

The report mentions that on 1st November, 2023, a complaint was lodged by the private respondent on the basis of which A.J.C. Bose B. Garden PS Case No. 243/23 dated 1st November, 2023 under Sections 506/509/195A/354A/354C/354D/387 IPC was initiated.

On 8th November 2023, the petitioner was seen loitering outside the house of the private respondent and disturbing the respondent no.8 by making gestures to insult her modesty, leading to a heated exchange of

words. The private respondent called the police and both parties were asked to report to the police station to file their respective complaints, if they wanted to. Both the parties visited the police station.

After hearing both the parties, the Investigating Officer issued a notice under section 41A CrPC and intended to serve the same upon the petitioner in the police station itself which the petitioner refused to accept and he showed grave aggression. The incident was diarized in A.J.C. Bose B. Garden PS vide GDE No. 403 dated 8th November, 2023.

The petitioner sought anticipatory bail which stood rejected by the Court on 19th December, 2023.

On 23rd January, 2023, a fresh attempt was made to serve the petitioner the notice under Section 41A. The officer of the Detective Department visited the petitioner's house. The petitioner managed to escape and his mother refused to accept the notice. The entire incident was videographed. The tower location of the petitioner was tracked and he was found proceeding on the road in the Salt Lake area at around 20.45 hours. Attempt was made to serve notice under Section 41A but he not only refused to accept the notice but also tried to escape compelling the police to arrest him.

The explanation given by the Investigating Officer does not clearly mention as to whether the incident of the petitioner trying to escape on the 23rd January, 2024 and refusing to accept the notice was videographed or not. The police had the residential address of the petitioner where the notice under Section 41A could have been sent through post, or in the case of refusal to accept the notice, the same could have

been affixed on the outer wall of the petitioner's premises. The same was not done.

It has been mentioned that the mother of the petitioner refused to accept the notice. The notice in question was not addressed to the mother of the petitioner. The same was addressed to the petitioner and it was for the petitioner to accept the notice and not for anybody else to accept the same on his behalf.

The report mentions that the fact of refusal to accept by the mother was video recorded, but surprisingly, the incident of serving the notice upon the petitioner at around 8.45 pm in the evening on the open road and the petitioner allegedly trying to flee from the said place without accepting the notice, has not been videographed. The petitioner was arrested.

On a complaint which was lodged before the police in the month of November, 2023, the Court fails to understand the grave urgency and the pressing necessity to arrest the petitioner without service of notice under Section 41A. The said act is not in line with the guidelines laid down by the Hon'ble Supreme Court in the matter of Arnesh Kumar (supra).

The Investigating Officer ought to have acted a bit more reasonably and given some more time and opportunity to the petitioner to respond to the notice u/s 41A.

However, as it appears that the investigation of the subject case is over and charge sheet has already been filed, accordingly, it will be open for the petitioner to approach the learned Court in seisin of the matter for any further relief that he seeks.

The notice under Section 41A Cr.P.C. dated 8th November, 2023 be retained with the record.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)