

06.03.2025

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C.R.M. (A) No. 589 of 2025

In Re:- An application for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita in connection with Amdanga Police Station Case No. 73 of 2025 dated 24.01.2025 under Sections 308(4)/3(5) of the BNS.

And

In Re : Amar Jana ..... petitioner

Mr. Arindam Jana  
Mr. Asraf Mandal

.....for the petitioner

Mr. Rudradipta Nandy, learned APP  
Mr. Iqbal Kabir  
Mr. Atanu Ghosh

..... for the State

Mr. Sreyash Kumar Singh

..... for the de facto complainant

1. During pendency of the application for anticipatory bail the petitioner was arrested. Under these circumstances we called upon the investigating officer to submit explanation in respect of compliance of the directions in *Armesh Kumar vs. State of Bihar & Anr.*<sup>1</sup>.

2. Explanation submitted by the investigating officer is placed on record. Copy of the explanation is handed over to the learned Counsel for the petitioner.

3. In the explanation it is stated petitioner had threatened the *de facto* complainant on 30.01.2025. The fact was diarized. On the same day around 9:00 p.m. the

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<sup>1</sup> (2014) 8 SCC 273

investigating officer went to the residence of the petitioner to serve notice under Section 35(3) of the BNSS but failed. On 14.02.2025 again the investigating officer received information that threats have been held out to the victim. As a result on 18.02.2025 at 12:40 hours he had arrested the petitioner. He had received intimation with regard to the pendency of anticipatory bail application after the arrest at 14:00 hours.

4. We have considered the explanation in light of the check list and forwarding report submitted before the jurisdictional Magistrate. Though the check list shows arrest was made to prevent the accused from holding out threats to witnesses, cause disappearance of evidence, preventing accused from committing further crime and proper investigation of the case, the forwarding memorandum is a cryptic one and does not lay down the factual foundation to arrive at the aforesaid conclusion. The report does not refer to the antecedents of accused which would give an indication of his criminal propensity and possibility of committing similar offence in future. Apart from a laconic statement, the report is singularly silent with regard to threats held out to the *de facto* complainant and other witnesses on 30.01.2025 and 14.02.2025.

5. Mr. Jana, learned Counsel for the petitioner submits these events have been subsequently manufactured to justify the arrest. He also contends the arrest was hastily made

and the arrest memorandum does not bear signature of a relation or local witness.

6. We are constrained to hold the forwarding memorandum was prepared in an indifferent and callous manner. Given this situation, we would have ordinarily accepted Mr. Jana's submission that arrest was illegal but deeper scrutiny of facts show failure to disclose the earlier threats in the forwarding memo is a callous remissness of the investigating officer and not an afterthought. We are persuaded to come to this conclusion as the threats held out on 30.01.2025 had been contemporaneously diarised as General Diary entry no. 1925 at the police station.

7. Learned Additional Public Prosecutor has also placed before us the criminal antecedents of the petitioner which discloses his propensity to commit offences in future.

8. Materials placed before us support the reasons set out in the check list justifying arrest in the present case. But we disapprove the callous manner in which the forwarding memo was prepared without disclosing relevant materials supporting the reasons noted in the said check list as per *Arnesh Kumar* (supra). One of the mandate in *Arnesh Kumar* (supra) is that the investigating officer must satisfy the jurisdictional Magistrate with regard to the reasons and justification for arrest. Merely ticking the boxes in a check list is not enough. Notings in the check list must be supported by foundational facts justifying the arrest. This has not been done by the investigating officer,

though the materials placed before us which the investigating officer presumably due to lack of knowledge failed to disclose in the forwarding report justify the arrest.

9. Accordingly, we choose not to initiate contempt proceeding against the said officer but we direct him to be careful in future and undergo necessary training in the Police Training College.

10. We also request the Director General and Inspector General of Police to undertake supervisory steps to ensure real and substantial compliance of the directions in *Arnesh Kumar (supra)* and *Satender Kumar Antil vs. Central Bureau of Investigation and Anr.*<sup>2</sup> so that similar omissions do not occur in future.

11. With these directions, the proceeding is closed.

**(Gaurang Kanth, J.)**

**(Joymalya Bagchi, J.)**

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<sup>2</sup> (2022) 10 SCC 51