

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1049 of 2021

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Lallan Kumar Yadav Son of Dashrath Prasad Yadav Resident of Village -
Khemi Chak, P.O. - Sonepur, P.S. - Sonepur, district - Saran, Pin Code-
841101

... .. Petitioner/s

Versus

1. The State of Bihar, through its additional Chief Secretary, Home Department, Government of Bihar, Patna
2. The Director General of Police, Government of Bihar, Sardar Patel Bhawan, Nehru Marg, Patna -800023
3. The Deputy Inspector General, Saran Range, Chhapra.
4. The Superintendent of Police, Saran at Chhapra.
5. The then Inspector Cum SHO, Sonepur Police Station at Chhapra, Saran, namely Akil Ahmed at present posted in District - Bhagalpur,
6. The then Assistant Sub- Inspector, Sonepur Police Station at Chhapra, Saran, namely Zaffarudin presently posted at District - Gopalganj,
7. Jitendra Kumar S/o Gopal Prasad R/o Village- Sahpur Diyara, PS-Sonepur, District-Saran

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Sharma, Advocate
For the State	:	Md. Nasrul Huda Khan, SC-1
		Md. Fazle Karim, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 13-02-2026

The present writ petition has been preferred by the petitioner for declaration of detention of the petitioner by Sonepur Police Station for three days i.e. from 30.07.2020 to 01.08.2020 as illegal. The petitioner is further seeking compensation on account of illegal detention.



2. Heard learned counsel for the petitioner and learned counsel for the State.

3. Learned counsel for the petitioner submits that without any FIR or any legal justification, the petitioner was kept in illegal custody for three days i.e. from 30.07.2020 to 01.08.2020 by Sonapur Police Station. He further submits that the FIR bearing Sonapur P.S. Case No. 574 of 2020 was registered on 01.08.2020, but the petitioner was taken to custody since 30.07.2020 itself and thereafter, he was produced before learned Judicial Magistrate on 02.08.2020 for judicial remand and he was remanded to judicial custody in Sonapur P.S. Case No. 574 of 2020. Thereafter, the petitioner filed an application for regular bail and he got regular bail on 13.08.2020 by the Court of learned C.J.M., Saran at Chhapra in Sonapur P.S. Case No. 574 of 2020 and ultimately he got released on 17.08.2020 after furnishing of bail bonds.

4. Learned counsel for the petitioner further submits that as such, there was no reason to take the petitioner into custody prior to lodging of FIR bearing Sonapur P.S. Case No. 574 of 2020 dated 01.08.2020 and hence, it is illegal detention. Moreover, the FIR bearing Sonapur P.S. Case No. 574 of 2020 was registered for the offence punishable under Sections 341,



323, 379, 506 read with Section 34 of the Indian Penal Code in which maximum punishment provided was three years in which the police was not required to arrest the petitioner right away. The police had to follow the guidelines as provided by Hon'ble Supreme Court in **Arnesh Kumar Vs. State of Bihar**, as reported in **(2014) 8 SCC 273**, but the concerned police has not complied with the directions.

5. He further submits that no reason has been provided in the case diary regarding the arrest of the petitioner and neither any reason has been given for immediate arrest, nor has the police issued any notice under Section 41A Cr.PC to the petitioner. As such, the arrest of the petitioner was again illegal and even learned Judicial Magistrate has not complied with the direction of Hon'ble Supreme Court, because in the given facts and circumstances of the case, he was required to see whether the police has complied with the direction of Hon'ble Supreme Court as given in **Arnesh Kumar Case** (supra) before arresting the petitioner for offence punishable up to seven years of imprisonment and as such, even remand is illegal.

6. However, learned counsel for the State submits that there is no illegality or infirmity in the arrest of the petitioner. The petitioner was not arrested on 30.07.2020. He was only



summoned for inquiry in regard to written report which led to lodging of FIR bearing Sonepur P.S. Case No. 574 of 2020. He was arrested only after lodging of FIR on 01.08.2020 and on the very next day, he was produced before learned Judicial Magistrate for judicial remand and thereafter, he was remanded to judicial custody.

7. He further submits that the order of judicial remand was never challenged by the petitioner before any higher Court, either in writ jurisdiction or otherwise and in stead, he filed an application for regular bail and in fact, he was granted regular bail and got released on 17.08.2020 after furnishing of bail bonds. As such, the arrest of the petitioner is legal and for want of any challenge against the remand order, passed by learned Judicial Magistrate, the legal nature of the arrest becomes absolute. As such, it does not lie in the mouth of the petitioner that the arrest is illegal and hence, there is no reason to grant any compensation to him for claiming that his arrest was illegal.

8. He further submits that prior to this writ petition, the petitioner has also moved Bihar Human Rights Commission and on direction of Bihar Human Rights Commission, the concerned Superintendent of Police got inquiry conducted in regard to the allegation and he found that there was nothing



illegal. The petitioner was arrested on 01.08.2020, after lodging of FIR and he was produced before learned Judicial Magistrate only after one day for remand and judicial custody and accordingly, he was remanded to judicial custody by learned Judicial Magistrate. As such, there is nothing on record to show that the arrest of the petitioner is illegal and hence, there is no question of any compensation to the petitioner.

9. I considered the submissions advanced by both the parties and perused the material on record.

10. I find that there is nothing on record to show that the petitioner was arrested on 30.07.2020. The petitioner was arrested in Sonapur P.S. Case No. 574 of 2020 on 01.08.2020 and he was produced before learned Judicial Magistrate on 02.08.2020 and thereafter, he was remanded to judicial custody by learned Judicial Magistrate. It appears that prior to 01.08.2020, on 30.07.2020 the petitioner was summoned for inquiry in regard to the written report leading to lodging of FIR bearing Sonapur P.S. Case No. 574 of 2020.

11. It also transpires that the petitioner never challenged the arrest and the remand before the High Court or any other Court. In stead, the petitioner filed an application for regular bail and he got bail and released subsequently. As such,



for want of setting aside the remand order, passed by the competent Criminal Court, arrest becomes legal and it is absolute for want of any challenge to the higher Court and getting it set aside. Though it appears from the perusal of the case diary that the police officer before arresting the petitioner in Sonapur P.S. Case No. 574 of 2020, he has not complied with the direction of Hon'ble Supreme Court. But this non-compliance of direction of Hon'ble Supreme Court as given in **Arnesh Kumar Case** (supra) should have been raised just after arrest or just after remand, but he has not chosen to prefer any judicial proceeding against this illegal arrest or the illegal remand to the Writ Court. Instead, the petitioner preferred an application for regular bail which amounts to acquiescence of the petitioner that his detention was legal. Thereafter, it does not lie in the mouth of the petitioner to raise illegality of the arrest.

12. Hence, timing of challenging the arrest or remand subsequently is wrong. Had the petitioner come prior to filing of regular bail petition and just after remand by learned Judicial Magistrate, the Writ Court could have looked into the compliance of direction of Hon'ble Supreme Court by the police or even learned Judicial Magistrate at the time of remand. But now that time has passed and this is not the stage to look into



the compliance with the direction of Hon'ble Supreme Court in **Arnesh Kumar Case** (supra), either by the police or by the learned Judicial Magistrate. It is too late to look into such plea taken by the petitioner. Hence, the present petition is liable to be dismissed.

13. Accordingly, the present petition stands dismissed.

14. However, dismissal of the present writ petition does not mean that this Court is approving the conduct of the police officers as well as learned Judicial Magistrate. The perusal of the case diary shows that the concerned police officer is totally oblivious of the direction of Hon'ble Supreme Court as given in **Arnesh Kumar Case** (supra). Even, unfortunately, learned Judicial Magistrate appears to be ignorant about the guidelines issued by Hon'ble Supreme Court in **Arnesh Kumar Case** (supra) to be followed at the time of remand. Learned Judicial Magistrate is equally duty bound to look into the compliance by the police officer at the time of arrest in a case in which maximum punishment provided is seven years and if the Judicial Magistrate finds no compliance, then the Judicial Magistrate is duty bound to reject the application of the police for remand of the arrestee to judicial custody or otherwise. But this duty has not been done by the Judicial Magistrate. If the



Judicial Magistrate could have perused the case diary before passing remand order, he could have rejected, because there is no whisper regarding compliance of the direction of Hon'ble Supreme Court as given in **Arnesh Kumar Case** (supra).

15. Here, it would be pertinent to refer to the directions issued by Hon'ble Supreme Court in **Arnesh Kumar Case** (supra) which reads as follows:

"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;

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.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine."

16. The direction given by Hon'ble Apex Court in **Arnesh Kumar case** (supra) has been reiterated by Hon'ble Supreme Court in **Mohd. Asfak Alam v. State of Jharkhand** as reported in **(2023) 8 SCC 632**. The direction reads as follows:

"16. The impugned order of rejecting the bail and directing the appellant, to surrender and later seek bail, therefore, cannot stand, and is hereby set aside. Before parting, the Court would direct all the courts seized of proceedings to strictly follow the law laid down in **Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273** and reiterate the directions contained thereunder, as well as other directions.

16.1.(I) **Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273**

"11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrates 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-AIPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41CrPC;



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

11.3. The police officer shall forward the checklist 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.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-AIPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.”

16.2.(II) The High Court shall frame the above directions in the form of notifications and guidelines to be followed by the Sessions Courts and all other and criminal courts dealing with various offences.

16.3.(III) Likewise, the Director General of Police in all States shall ensure that strict instructions in terms of the above directions are issued. Both the High Courts and the DGPs of all States shall ensure that such guidelines and



Directives/Departmental Circulars are issued for guidance of all lower courts and police authorities in each State within eight weeks from today.
16.4.(IV) Affidavits of compliance shall be filed before this Court within ten weeks by all the States and High Courts, through their Registrars."

17. Learned Registrar General is directed to circulate a copy of this order amongst the Judicial Officers. He is also directed to send a copy of this order to Director General of Police, Bihar to circulate it amongst the police officials, because despite several directions of Hon’ble Supreme Court and this Court as well as guidelines of the Government of Bihar, the Police Officers are not complying with the direction as issued by Hon’ble Supreme Court in **Arnesh Kumar Case** (supra) at the time of arrest in a case maximum imprisonment provided up to seven years.

(Jitendra Kumar, J.)

Shoaib/-

AFR/NAFR	AFR
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