

# **Sudarshan Sharma And 3 Others vs State Of Up And 3 Others on 1 May, 2025**

**Author: Mahesh Chandra Tripathi**

**Bench: Mahesh Chandra Tripathi**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:69344-DB

Court No. - 42

Case :- CRIMINAL MISC. WRIT PETITION No. - 8568 of 2025

Petitioner :- Sudarshan Sharma And 3 Others

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Manish Kumar Kashyap,V.P. Singh Kashyap

Counsel for Respondent :- G.A.,Sudhakar Yadav

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Anil Kumar-X,J.

1. Heard learned counsel for the petitioners, learned Additional Government Advocate representing the State-respondents and learned counsel for the informant.

2. The present writ petition has been filed under Article 226 of the Constitution of India, wherein the petitioners has challenged the legality, propriety, and validity of the impugned First Information Report dated 06.04.2025, registered as Case Crime No.177 of 2025, under Section 331(4), 305(a), 352, 351(3) of the BNS 2023, at Police Station Soraon, District Kasganj. The petitioners have further

prayed for issuance of a direction restraining the police authorities from effecting their arrest pursuant to the aforesaid impugned F.I.R.

3. Learned counsel for the petitioners have submitted that the F.I.R. in question is founded upon false and frivolous allegations, and even if the entire contents of the F.I.R. are taken on their face value, no offence is made out against the petitioners. He further contends that the alleged offences are punishable with imprisonment for a term of seven years or less, and as such, the procedural safeguards enshrined under Section 41-A of the Code of Criminal Procedure, 1973<sup>2</sup> now replaced by Sections 35 and 35(3) of the B.N.S.S., 2023<sup>3</sup> are squarely attracted. It is, therefore, incumbent upon the police authorities to act in strict compliance with the said statutory provisions before taking any coercive action against the petitioners.

4. In this context, it is pertinent to refer to the landmark judgment of the Hon'ble Supreme Court in Arnesh Kumar vs. State of Bihar, reported in (2014) 8 SCC 273, wherein the Apex Court, while expressing concern over routine and mechanical arrests in offences punishable with imprisonment up to seven years, laid down binding directions to safeguard the rights of the accused and to ensure that the liberty of citizens is not curtailed without due cause. The Hon'ble Supreme Court observed as under:

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

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

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

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

The Magistrate while authorizing 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 authorize detention;

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;

Notice of appearance in terms of Section 41A of Cr.PC 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;

Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, he shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

Authorizing detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court."

5. The Court clarified that the above safeguards are not confined to offences under Section 498-A of the Indian Penal Code or the Dowry Prohibition Act but are applicable to all offences punishable with imprisonment up to seven years, whether with or without fine.

6. The said principles and directions have been recently reaffirmed and reiterated by the Hon'ble Supreme Court in Md. Asfak Alam vs. State of Jharkhand & Another, Criminal Appeal No. 2207 of 2023, decided on 31.07.2023, wherein the Court reiterated the binding nature of the guidelines laid down in Arnesh Kumar (supra), emphasising their continued applicability in similarly situated cases.

7. Considering the nature of the allegations, the punishment prescribed, and the law laid down in the decisions of Arnesh Kumar and Md. Asfak Alam (supra), this Court deems it appropriate to direct that the Investigating Officer shall proceed strictly in accordance with law. In particular, before taking any coercive action such as arrest, the Investigating Officer shall mandatorily issue a notice under Sections 35 and 35(3) of the B.N.S.S., 2023 (which correspond to the erstwhile Section 41-A Cr.P.C.) and afford an opportunity to the petitioners to participate in the investigation. The petitioners, on his part, shall extend full cooperation in the ongoing investigation and shall appear before the Investigating Officer as and when required.

8. It is further clarified that in the event the Investigating Officer, during the course of investigation, collects credible evidence and materials necessitating arrest, then he shall be at liberty to take appropriate steps, including arrest of the petitioners, after recording cogent reasons for the same in writing. However, such action must be taken strictly in adherence to the procedural safeguards and guidelines laid down by the Hon'ble Supreme Court in Arnesh Kumar and Md. Asfak Alam (supra). Furthermore, it is expected of the Investigating Officer that the investigation in the present case shall be concluded expeditiously, preferably within a period of 60 days from today, and a police report under Section 193(3) of the B.N.S.S., 2023 (corresponding to Section 173(2) Cr.P.C.) shall be submitted before the jurisdictional Magistrate within the said timeframe.

9. With the aforesaid directions and observations, the instant writ petition is disposed of.

(Anil Kumar-X,J.) (Mahesh Chandra Tripathi,J.) Order Date :- 1.5.2025 A. Pandey