

Ajay Kumar Srivastava vs State Of U.P. And 2 Others on 30 April, 2025

Author: Mahesh Chandra Tripathi

Bench: Mahesh Chandra Tripathi

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:67803-DB

Court No. - 42

Case :- CRIMINAL MISC. WRIT PETITION No. - 8397 of 2025

Petitioner :- Ajay Kumar Srivastava

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Gautam

Counsel for Respondent :- G.A.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Anil Kumar-X,J.

1. Heard learned counsel for the petitioner as well as the learned Additional Government Advocate representing the State-respondents at length.

2. The present writ petition has been filed under Article 226 of the Constitution of India, wherein the petitioner has challenged the legality, propriety, and validity of the impugned First Information

Report dated 20.02.2025, registered as Case Crime No. 0062 of 2025, under Sections 406, 420, 506 I.P.C., P.S. - Kotwali, District- Basti. The petitioner has further prayed for issuance of a direction restraining the police authorities from effecting his arrest pursuant to the aforesaid impugned F.I.R.

3. Learned counsel for the petitioner has 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 petitioner. 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^{now replaced by Sections 35 and 35(3) of the B.N.S.S., 2023}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 petitioner.

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. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, 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.

6. 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.

7. 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.

8. This Court has carefully perused the contents of the impugned F.I.R. and is of the considered opinion that, at this stage, it does disclose commission of a cognizable offence. Hence, in light of the authoritative pronouncements of the Hon'ble Supreme Court in *State of Haryana & Others vs. Bhajan Lal & Others*, 1992 Supp. (1) SCC 335; *Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra*, AIR 2021 SC 1918; and *Leelavati Devi @ Leelawati & Another vs. State of U.P.*, Special Leave to Appeal (Crl.) No. 3262/2021 decided on 07.10.2021, the prayer of the petitioner seeking quashing of the F.I.R. at the threshold stage cannot be acceded to.

9. Nonetheless, 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 petitioner to participate in the

investigation. The petitioner, on his part, shall extend full cooperation in the ongoing investigation and shall appear before the Investigating Officer as and when required.

10. 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 petitioner, 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.

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

(Anil Kumar-X,J.) (Mahesh Chandra Tripathi,J.) Order Date :- 30.4.2025 Sachin