

Santosh Kumar vs State Of U.P. And 3 Others on 1 April, 2025

Author: Mahesh Chandra Tripathi

Bench: Mahesh Chandra Tripathi

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:44811-DB

Court No. - 42

Case :- CRIMINAL MISC. WRIT PETITION No. - 6010 of 2025

Petitioner :- Santosh Kumar

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ankit Mishra,Kripesh Mishra,Vikas Mishra

Counsel for Respondent :- G.A.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard learned counsel for the petitioner and learned A.G.A. for the State respondents.

2. The instant writ petition is preferred under Article 226 of Constitution of India assailing the legality and validity of the impugned First Information Report dated 09.02.2025 registered as Case Crime No.0035 of 2025, under Section 303(2), 317(2) BNS, Police Station Adalhat, District Mirzapur. Further request is made to issue a direction to the respondents not to arrest the petitioner in pursuance of impugned First Information Report.

3. Learned counsel for the petitioner submits that the impugned FIR is lodged on false allegations, and no offences are made out against the petitioner. He further submits that the alleged offences are punishable under 7 years or less than 7 years and therefore, the police authorities are bound to follow the procedure laid down under Section 41-A Cr.P.C. (now Sections 35 and 35 (3) of B.N.S.S., 2023).

4. Hon'ble Supreme Court in the case of Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 has laid down detailed guidelines for arresting a person, which are being reproduced herein below:-

"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.

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, 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."

5. The similar view is also reiterated by Hon?ble Apex Court in recent judgment in the case of Md. Asfak Alam Vs. the State of Jharkhand and another passed in Criminal Appeal No.(S) 2207 of 2023 decided on 31.07.2023, which also reiterated the guidelines laid down in the case of Arnesh Kumar (supra).

6. We have occasion to peruse the FIR, which prima facie discloses cognizable offence and therefore, in view of law laid down by the Apex Court in the case of State of Haryana and others vs. Bhajan Lal and others, 1992 Supp. (1) SCC 335, M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra, AIR 2021 SC 1918 and in Special Leave to Appeal (Crl.) No.3262/2021 (Leelavati Devi @ Leelawati & another vs. the State of Uttar Pradesh) decided on 07.10.2021, the prayer made to quash the FIR at this stage cannot be entertained.

7. Considering the facts and circumstances of the case and in the light of the law laid down in the case of Arnesh Kumar (supra) and Md. Asfak Alam (supra), the investigating officer may proceed in accordance with law but certainly provide notice to the petitioner, as provided under Sections 41 and 41(A) of Cr.P.C. (now Sections 35 and 35(3) of B.N.S.S., 2023) and summon the petitioner in the instant matter. The petitioner is obliged to render his fullest cooperation in the ongoing investigation.

8. It is further clarified that in case the investigating officer finds credible material and evidence during investigation against the petitioner, then in that eventuality the investigating officer after recording its reasons may effect the arrest of the petitioner but certainly adhering the detailed guidelines as provided in the case of Arnesh Kumar (supra) and MD. Asfak Alam (supra). It is also expected that the investigating officer must proceed with an endeavour to finalise the investigation within a period of 60 days from today and submit its reports under Section 173(2) Cr.P.C. (now Section 193 (3) of B.N.S.S., 2023) in the court of jurisdictional Magistrate.

9. With the aforesaid observations, the instant writ petition stands disposed of.

(Prashant Kumar,J.) (Mahesh Chandra Tripathi,J.) Order Date :- 1.4.2025 A. Pandey