

Nitin vs State Of U.P. And 2 Others on 31 January, 2025

Author: Siddharth

Bench: Siddharth

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:14479-DB

Court No. - 47

Case :- CRIMINAL MISC. WRIT PETITION No. - 1748 of 2025

Petitioner :- Nitin

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

Counsel for Petitioner :- Mandvi Tripathi, Santosh Tripathi

Counsel for Respondent :- G.A.

Hon'ble Siddharth, J.

Hon'ble Praveen Kumar Giri, J.

1. Heard learned counsel for the petitioner, learned A.G.A. for the State and perused the record.
2. By means of the present writ petition under Article 226 of the Constitution of India, the petitioner is assailing the legality and validity of the FIR dated 18.12.2023 lodged in Case Crime No. 1150 of 2023, under Sections- 506, 504 & 323 IPC, Police Station- Kavi Nagar, District- Ghaziabad.
3. Submission made by learned counsel for the petitioner is that the present FIR is an outcome of dispute between the parties. The offences are punishable under 7 years or less than 7 years.

The Supreme Court in the case of Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 has laid down guidelines for arresting a person, which are being reproduced hereinbelow:-

"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."

4. In the 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, the Apex Court has reiterated the guidelines given in the case of Arnesh Kumar (supra).

5. Taking into account the totality of the fact and circumstances of the case and the in the light of the ratio laid down in the case of Arnesh Kumar (supra) and reiterated in the case of MD. Asfak Alam (supra), the freedom of the petitioner is protected, provided if the I.O. of the case gives notice to him as provided under Sections 41 and 41(A) of Cr.P.C. and summon the petitioner in this case, petitioner is obliged to render his fullest cooperation in the investigation.

6. It is made clear that if some credible material is brought on record during investigation against the petitioner, then only the I.O. of the case after recording its reason may affect the arrest of the petitioner, strictly adhering to the guidelines provided in the case of Arnesh Kumar (supra) and MD. Asfak Alam (supra). It is also directed that the I.O. of the case shall gear up the investigation and conclude the same preferably within a period of 60 days from today and submit its report u/s 173(2) Cr.P.C. in the court of concerned Magistrate.

7. With the aforesaid observations, the instant writ petition stands disposed off.

Order Date :- 31.1.2025 S.K.S.