

Court No. - 47

Case :- CRIMINAL MISC. WRIT PETITION No. - 5531 of 2021

Petitioner :- Ranjeet @ Manjeet And 6 Others

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

Counsel for Petitioner :- Pramod Kumar Shukla, Maiku Lal Maurya

Counsel for Respondent :- G.A., Gyan Prakash

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Narendra Kumar Johari, J.

Heard learned counsel for the petitioners, learned A.G.A. for the State and Shri Gyan Prakash, learned counsel for the informant.

The present petition has been filed seeking for quashing of the first information report dated 16.06.2021 registered as Case Crime No.0273 of 2021 under Section 498-A, 323, 342, 504, 506 I.P.C. and Section 3/4 Dowry Prohibition Act, 1961, P.S.- Jaithara, District-Etah.

By order dated 25.08.2021, the Co-ordinate Bench of this Court has referred the matter to Mediation and Conciliation Centre of this Court as the dispute is matrimonial in nature.

As per the report submitted by the Registrar/Incharge dated 26.07.2022, it appears that the mediation completed, however no agreement arrived between the parties.

Learned counsel for the petitioners submitted that all alleged offences are punishable with imprisonment of seven years, therefore the police authorities are bound to follow the procedure laid down under Section 41-A Cr.P.C. The petitioners have been wrongly implicated and could not be arrested. Learned counsel for the petitioners has placed reliance on the judgement of this Court dated 28.01.2021 in ***Criminal Misc. Writ Petition No.17732 of 2020 (Vimal Kumar and 3 others vs. State of UP and 3 others)*** in which guidelines have been framed following the judgement of the Apex Court in different cases, relating to offences providing punishment of seven years or less.

The investigating agencies and their officers are duty bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued in ***Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273***. Any dereliction on their part has to be

brought to the notice of the higher authorities by the court followed by appropriate action. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of the Apex Court, which is on the touchstone of Article 21 of the Constitution of India (**Ref. Nimesh Tarachand Shah v. Union of India, (2018) 11 SCC 1**). This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offence. On the scope and objective of Section 41 and 41A, it is obvious that they are facets of Article 21 of the Constitution. The same has been elaborately dealt with in paragraphs 7.1 to 12 of the judgment in Armesh Kumar's case (supra).

We have gone through the impugned first information report and we are of the opinion that the guidelines framed by this Court in the above noted judgements are equally applicable to the facts of the instant case.

Accordingly, the instant petition also stands **disposed of** in view of the judgments cited above.

Order Date :- 10.10.2022

A. Pandey