

Chhotu Sharma @ Chhotu Kumar Sharma vs The State Of Bihar on 16 May, 2025

Author: P. B. Bajanthri

Bench: P. B. Bajanthri

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.1610 of 2023

=====

Chhotu Sharma @ Chhotu Kumar Sharma, son of Chandeshwari Sharma,
resident of Village- Basbitti, Ward no. 10, P.S.- Supaul, District- Supaul,
State- Bihar- 852130.

... .. Petitioner/s

Versus

1. The State of Bihar through Shri Chaitanya Prasad, the Principal Secretary, Home Department, Govt. of Bihar, Patna.
2. Shri Ramesh Chandra Malviya, the Principal Secretary, Department of Law, Bihar, Patna.
3. Shri Rajvindar Singh Bhatti, the Director General of Police, Bihar, Patna.
4. Smt. Radha Kumari, the then In-charge Chief Judicial Magistrate, Civil Court, Supaul, presently, Civil Judge (Sr. Div.)-cum-C.J.M-cum-A.S.J., Purnea.
5. Shri Shaishav Yadav, the Superintendent of Police, Supaul, District- Supaul.
6. Shri Kumar Indra Prakash, Deputy Superintendent of Police, Supaul, District- Supaul.
7. Shri Binod Kumar Singh, the Station House Officer of Supaul Police Station, District- Supaul.
8. Shri Baiju Kumar, the Investigating Officer of Supaul Police Station Case No. - 821/2021, Police Station - Supaul, District- Supaul.
9. Shri Yogendra Prasad (P.S.I) the then Investigating Officer, Supaul Police Station Case No.- 821/2021, Supaul

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Kuldeep Kumar, Advocate

For the Opposite Party/s : Mr. Prabhat Kumar Verma (AAG- 3)

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

And

HONOURABLE MR. JUSTICE S. B. PD. SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 16-05-2025

Heard the parties.

2. The present petition has been filed for initiating contempt proceedings against the respondents/contemnors for deliberately and willfully disobeying and not complying the orders passed by Hon'ble Apex Court in illegally Patna High Court MJC No.1610 of 2023 dt.16-05-2025

2/39

detaining the petitioner in judicial custody.

3. As the facts would unveil, the informant, Ruby Kumari registered an F.I.R against Kartik Sharma, Chandeshwari Sharma and petitioner Chhotu Sharma on 03.12.2021

alleging therein that on 10.07.2021, Kartik Kumar Sharma being neighbour of the informant took a loan of Rs. 5,20,000/- for personal need and promised to return the aforesaid amount by September, 2021 and as a security, he issued two cheques bearing Cheque Nos. 507316 and 507317 of the aforesaid amount in favour of the informant. However, when Kartik Sharma did not return the amount on the assigned date, he convened a Panchayati. In the Panchayati, co-accused Kartik Sharma, Chandeshwari Sharma and petitioner Chhotu Sharma assured the informant to return her money by 03.10.2021, else, informant would be free to receive her amount by submitting two cheques issued earlier into her bank account. When the informant did not receive her amount till 03.10.2021, she submitted aforesaid two cheques for its encashment which got bounced on account of insufficient balance in the account of the drawer. The informant, Patna High Court MJC No.1610 of 2023 dt.16-05-2025 thereafter, served two legal notices on 11.10.2021 and 03.11.2021 respectively upon the accused persons but despite receiving the said notices, they neither returned the amount nor responded of the legal notices. On 24.11.2021, at about 9 O' clock, all the F.I.R named accused persons including the petitioner came at the house of the informant, dashed and threatened her of dire consequences. Hence, the F.I.R.

4. The said complaint case was sent to the concerned Police Station under Section 156(3) of the Cr.P.C, on the basis of which, Supaul P.S. Case No. 821 of 2021 was registered against Kartik Sharma, Chandeshwari Sharma and petitioner Chhotu Sharma under Sections 341, 323, 354, 506, 420, 504, 506 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act.

5. As the narration would unfurl, on 12.02.2022, the Investigating Officer (respondent No. 9) arrested the petitioner along with other accused persons and produced them before learned Judicial Magistrate, 1st Class, Supaul (respondent No. 4), who was In-charge, C.J.M on that date.

6. On 12.02.2022, when the accused/writ petitioner Patna High Court MJC No.1610 of 2023 dt.16-05-2025 were produced for the first time before the Magistrate, the following order was passed which has been brought on record as Annexure-2.

Annexure-2 lqikSy 821@21 12-2-22& vuqla/kkudrkZ }kjk izkFkfedh ds uketn vfHk;qDr ¼41½ pUns"ojh "kekZ mez 55 o'kZ iso Loo ykyth "kekZ ,oa ¼42½ NksVw dkekj mez 26 o'kZ iso pUbn"ojh "kekZ] lko clfcðh okMZ uo&10 Fkkuk oks ftyk lqikSy dks fxjQrkj dj ekxZjf{kr cy ds lkFk izLrqr fd;k x;kA vfHk;qDrx.k iwNus ij crkrs gSa fd ekxZjf{kr cy ds fo:) dksbZ f'kdk;r ugha gSA rFkk fxjQrkjh dh lwpuk HkkbZ f'ko dkekj "kekZ ,oa vU; ifjokj okyksa dks gSA vfHkys[k dk voyksdu fd;k ftlls izrhr gksrk gS fd bl okn dh izkFkfedh /kkjk& 341]323]354]406]420]504]506 Hkko nao foo ,oa /kkjk 138 ,u-vkb- ,sDV esa ntZ gSA vuqla/kku drkZ fiek.M ds le; mifLFkr ugha gSA /kkjk 41 ¼41½ naoizolao dk uksfV" k vuqla/kkudrkZ }kjk ugha fn;k x;k gSA ;s fLyI ,oa dk.M nSfudh esa izLrqr ugha fd;k x;k gSA vr% fiek.M okil ¼4-Refuse½ fd;k tkrk gSA ys[kkfir gLrk{kj vLi'V izoeqo U;kono

7. From bare perusal of the order dated 12.02.2022, it clearly transpires that learned Magistrate had refused to Patna High Court MJC No.1610 of 2023 dt.16-05-2025 remand the accused/writ petitioner because neither notices under Section 41A of the Cr.P.C was served upon the petitioner along with other co-accused person namely Chandeshwari Sharma nor the law laid down under Section 41(1) Cr.P.C has been complied nor Investigating Officer was present at the time of remand of the accused persons.

8. After refusing to remand the accused persons/writ petitioner, on the next day i.e. 13.02.2022, the Investigating Officer rendered a forwarding letter to the learned Chief Judicial Magistrate, Supaul, requesting him to keep the accused persons in judicial custody for atleast one fortnight. The forwarding letter of the Investigating Officer which has been brought on record as Annexure-3 to the petition is reproduced hereunder:-

Annexure-3 lqikSy 821@21 lsok esa] ekuuh; eq[; U;kf;d n.Mkf/kdkjh egksn;] lqikSyA izlax&lqikSy Fkkuk dkaM laO 821@21 fnukad 03-12-2021 /kkjk 341@504@506@420@406@34 Hkko nao foo ,oa 138 ,uovkbo ,sDVA fo'k;&vxzlkj.k izfrosnu ds laca/k esaA egk" k;] Patna High Court MJC No.1610 of 2023 dt.16-05-2025 mi;qZDr izlax ,oa fo'k; ds lanHkZ esa lknj iwoZd lqfpr djuk gS fd izlax/khu dkaM ds izko yjo vfHko ¼41½ pUns"ojh "kekZ mez djhc 55 o'kZ firk ykyth "kekZ ¼42½ NksVq dkekj "kekZ mez djhc 26 o'kZ firk pUns"ojh "kekZ nksuks lko clefoVVh okMZ uo&10 Fkkuk o ftyk lqikSy dks fof/kor fxjQrkj dj gFkdM+h] jLlk vxzlkj.k izfrosnu ,oa lacaf/kr dkxtkrksa ds lkFk mfpr iqfyl vfHk{k k esa ekuuh; U;k;ky; esa miLFkkiu gsrq Hksth tk jgh gSA vr% Jheku~ ls lknj vuqjks/k gS fd mijksDr nksuksa izko uko vfHk;qDrksa dks de ls de ,d i[kokM+s rd ekuuh; fgjklr esa j[kus dh d'ik dh tk; rc rd vkjksi i= laHkkfor gSA Lkk{; Kki%& fo"okl Hkktu 1- ;g fd ;s nksuksa izkFkfedh ds ;ksxsUnz izlkn uko vfHko gSA 13-02-2022 2- ;g fd ;s nksuks ds fo:) lovofuo iz;kZIr lk{; miyC/k gSA lqikSy Fkkuk 3- ;g fd i;Zos{k.k ,oa izfronsu&2 esa nksuks vfHk;qDrksa ds fo:) lR; ik;k x;k gSA 4- psd fyLV lkFk ,oa nSfudh dk Nk;kizfr lkFk layXu gSA

9. On submission of forwarding letter by the Investigating Officer, on the same very day i.e. 13.02.2022, the accused persons/writ petitioner were produced before Judicial Magistrate, 1st Class/In-charge, C.J.M, Supaul who remanded the petitioner and Chandeshwar Sharma for Judicial custody till 24.02.2022. The order of the Judicial Magistrate dated 13.02.2022 has been brought on record as Annexure-4 which has been reproduced hereunder:-

Patna High Court MJC No.1610 of 2023 dt.16-05-2025 Annexure-4 lqikSy 821@21 13-2-22&vuqla/kkudrkZ }kjk vxzlkj.k izfrosnu fxjQrkjh eseks ,oa fpfdRldh; tkWap izfrosnu ds lkFk izkFkfedh ds uketn vfHk;qDr 1/41 1/2 pUns"ojh "kekZ mez 55 o'kZ iso Loo ykyth "kekZ ,oa 1/42 1/2 NksVq ddekj mez 26 o'kZ iso pUns"ojh "kekZ lko clfcVBh okMZ uo&10 Fkkuk oks ftyk lqikSy dks fxjQrkj dj ekxZjf{kr cy ds lkFk izLrqr fd;k x;kA vfHk;qDrx.k iwNus ij crkrs gS fd ekxZjf{kr cy ds fo:) dksbZ f"kd;k;r ugha gS rFkk fxjQrkjh dh lwpuk Hkrhtk ,oa HkkbZ f"ko ddekj "kekZ rFkk ifjokj ds vU; lnL;ksa dk gSA viuk vf/koDrk Lo;a j[kuk pkgrs gSaA vfHkys[k dk voyksdu fd;k flls izrhr gksrk gS fd bl okn dh izkFkfedh /kkjk&341]323]354]406]420]504]506 Hkko nao foo ,oa /kkjk 138 ,u-vkb- ,sDV esa ntZ gSA /kkjk 354]406]420] Hkko nao foo dk vkjksi vtekurh; izd`fr dk gSA dk.M nSfudh ds dafMdk 10]11]12]13]26]38 esa izkFkfedh ?kVuk dk leFkZu fd;k x;k gSA vr% vfHk;qDrksa dks U;kf;d vfHkj{kk esa ysdj fnukad 24-2-22 rd ds fy;s eaMy dkjk] lqikSy izfrizsf'kr djus dk vkns"k fn;k tkrk gSA dk;kZy; vfHk;qDrksa dk lh@MCyq tkjh djsaA ys[kkfir gLrk{kj vLi'V izoeqo U;konao

10. It is the case of the petitioner that by not issuing Patna High Court MJC No.1610 of 2023 dt.16-05-2025 notice to the accused under Section 41A Cr.P.C. within two weeks from the date of receipt of complaint by the petitioner, the respondent has committed contempt of court as directed in the decision in Arnesh Kumar vs. State of Bihar (2014) 8 SCC 273.

11. Keeping in view the aforesaid facts, this Court has to go through some cited judgments which are extracted below:-

12. In Joginder Kumar v. State of U.P. reported in 1994 SCC (4) 260, the Hon'ble Supreme Court while considering the misuse of police power of arrest, has opined:-

"No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another..... No arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter."

Patna High Court MJC No.1610 of 2023 dt.16-05-2025

13. In the said case, the Hon'ble Court also voiced its concern regarding complaints of human rights pre and after arrests and in that context observed:-

"The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violations of human rights because of indiscriminate arrests. How are we to strike a balance between the two?"

A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first the criminal or society, the law violator or the law abider"

14. In *D.K. Basu v. State of W.B.*, after referring to the authorities in *Joginder Kumar (supra)*, *Nilabati Behera Patna High Court MJC No.1610 of 2023 dt.16-05-2025 v. State of Orissa and State of M.P. v. Shyamsunder Trivedi* the Hon'ble Supreme Court laid down certain guidelines to be followed in cases of arrest and detention till legal provisions are made in that behalf as preventive measures. The said guidelines read as follows:-

"(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made.

It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or Patna High Court MJC No.1610 of 2023 dt.16-05-2025 having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his Patna High Court MJC No.1610 of 2023 dt.16-05-2025 arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of Patna High Court MJC No.1610 of 2023 dt.16-05-2025 effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

15. The Hon'ble Apex Court in the case of Arnesh Kumar v. State of Bihar and another reported in 2014(8) SCC 273 has observed thus:-

"Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson; the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is Patna High Court MJC No.1610 of 2023 dt.16-05-2025 despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique

motive."

16. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power of arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. As the offence with which we are concerned in the present appeal, provides for a maximum punishment of imprisonment which may be extended to seven years and fine, Section 41(1)(b), Cr.P.C which is relevant for the purpose, reads as follows:-

"41. When police may arrest without warrant.(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(a) x x x x x x x Patna High Court MJC No.1610 of 2023 dt.16-05-2025

(b) against whom a reasonable complaint has been made, or credible information been received, or a reasonable suspicion exists that he has committed a cognizable offence 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, if the following conditions satisfied, namely:-

(i) x x x x x x x

(ii) the police officer is satisfied that such arrest is necessary -

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from Patna High Court MJC No.1610 of 2023 dt.16-05-2025 making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writings:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for

not making the arrest.

17. From a plain reading of the aforesaid provisions, it is crystal clear that a person cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied Patna High Court MJC No.1610 of 2023 dt.16-05-2025 that such arrest will necessarily prevent such person from committing any further offence; or for proper investigation of the case; it is essential to prevent the accused from causing the evidence of the offence to disappear; or tempering with such evidence in any manner; or to prevent such from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. Only after satisfaction of the above conditions, the police can arrest any person in aforesaid punishable offence. All the above prerequisites for making arrest is based on facts. Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest in all cases where the arrest of a person is not required under the provisions of this sub-sections. In pith and core, the police officer before arrest must put a question to himself, why arrest ? Is it Patna High Court MJC No.1610 of 2023 dt.16-05-2025 really required in the case in hand ? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.P.C.

18. The Hon'ble Apex Court in the case of Arnesh Kumar (supra) has given the following direction to the police officers to not arrest the accused unnecessarily as well as the Magistrate to not authorize detention casually and mechanically which reads as under :-

"(1) 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.PC ;

(2) All police officers be provided Patna High Court MJC No.1610 of 2023 dt.16-05-2025 with a check list containing specified sub-

clauses under Section 41(1)(b)(ii);

(3) 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:

(4) The Magistrate while authorising 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

authorise detention;

(5) 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.

Patna High Court MJC No.1610 of 2023 dt.16-05-2025 (6) 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;

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

(8) Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

19. The Hon'ble Apex Court in the case of Dr. Rini Johar & Anr versus State of M.P & Ors as observed as Patna High Court MJC No.1610 of 2023 dt.16-05-2025 under:-

"23. In such a situation, we are inclined to think that the dignity of the petitioners, a doctor and a practicing Advocate has been seriously jeopardized. Dignity, as has been held in Charu Khurana v. Union of India, is the quintessential quality of a personality, for it is a highly cherished value. It is also clear that liberty of the petitioner was curtailed in violation of law. The freedom of an individual has its sanctity. When the individual liberty is curtailed in an unlawful manner, the victim is likely to feel more anguished, agonized, shaken, perturbed, disillusioned and emotionally torn. It is an assault on his/her identity. The said identity is sacrosanct under the Constitution. Therefore, for curtailment of liberty, requisite norms are to be followed. Fidelity to statutory safeguards instil faith of the collective in the system. It does not require wisdom of a seer to visualize that for some invisible reason, an attempt has been made to corrode the procedural safeguards which are meant to sustain the sanguinity of liberty. The investigating agency, as it seems, has put its sense of accountability to law on the Patna High Court MJC No.1610 of 2023 dt.16-05-2025 ventilator The two ladies have been arrested without following the procedure and put in the compartment of a train without being produced before the local Magistrate from Pune to Bhopal. One need not be Argus-eyed to perceive the same. Its visibility is as clear as the cloudless noon day. It would not be erroneous to say that the enthusiastic investigating agency had totally forgotten the golden words of Benjamin Disraeli:

"I repeat..... that all power is a trust that we are accountable for its exercise- that, from the people and for the people, all springs and all must exist."

24. We are compelled to say so as liberty which is basically the splendor of beauty of life and bliss of growth, cannot be allowed to be frozen in such a contrived winter. That would tantamount to comatosing of liberty which is the strongest pillar of democracy."

20. The observation of the Apex Court in the above decisions with regard to initiation of contempt proceedings apart from departmental action, in case of failure on the part of the Police Officer to comply with the provision under Patna High Court MJC No.1610 of 2023 dt.16-05-2025 Section 41A Cr.P.C., is only to prevent unnecessary harassment by way of arrest or threat to arrest being caused to the person accused.

21. The above principle has been reiterated by the Hon'ble Apex Court in the case of Satender Kumar Antil versus Central Bureau of Investigation reported in (2022) 10 SCC 51. The relevant paragraph reads as under:-

"D. Criminal Procedure Code, 1973- S. 41-A- Notice of appearance before police officer- Guidelines issued for avoiding unwarranted arrest and clogging of bail applications Held d. Even for a cognizable offence, an arrest is not mandatory as can be seen from the mandate of Section 41 CrPC. If the officer is satisfied that a person has committed a cognizable offence, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offence, and there is a necessity for an Patna High Court MJC No.1610 of 2023 dt.16-05-2025 arrest. Such necessity is drawn to prevent the committing of any further offence, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the court and the same cannot be assured. (Para 23) Section 41 Cr.PC 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. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offence alleged is more than seven years, among other reasons. (Para 24) g. The consequence of non-

compliance with Section 41 CrPC shall certainly inure to the benefit of the person Patna High Court MJC No.1610 of 2023 dt.16-05-2025 suspected of the offence. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail. (Para

25) h. The Supreme Court has clearly interpreted Sections 41(1)(b)(i) and (ii) CrPC inter alia holding that notwithstanding the existence of a reason to believe qua a

police officer, the satisfaction for the need to arrest shall also be present.

Thus, sub-clause (1)9b(i) of Section 41 has to be read along with sub-clause (ii) and therefore both the elements of "reason to believe" and "satisfaction qua an attest" are mandated and accordingly are to be recorded by the police officer. (Para 29) Endeavour of the Supreme Court in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure the above, it is directed as follows:

(I) All the State Governments to instruct its police officers not to Patna High Court MJC No.1610 of 2023 dt.16-05-2025 automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 Cr.PC.

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

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

(v) The Magistrate while authorising 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 authorise detention;

(v) 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:

Patna High Court MJC No.1610 of 2023 dt.16-05-2025

(vi) Notice of appearance in terms of Section 41-A CrPC 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:

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

(viii) Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court. (Para 27) The directions aforesaid shall not only apply to the cases under Section 498-A IPC 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.

(Para 27) Patna High Court MJC No.1610 of 2023 dt.16-05-2025 The directions aforesaid ought to be complied with in letter and spirit by the investigating and prosecuting agencies, while the view expressed by the Supreme Court on the non-compliance of Section 41 CrPC and the consequences that flow from it has to be kept in mind by the court, which is expected to be reflected in the orders.

(Para-28)

22. On the anvil of the aforesaid principles laid down by the Hon'ble Apex Court and a coordinate Bench of this Hon'ble Court, we propose to examine the factual aspect of the case.

23. In this context, firstly, it is relevant to scrutinize the refusal of remand order dated 12.02.2022 passed by the In-charge, C.J.M. From perusal of that order, it clearly transpires that learned Magistrate has found three reasons for not remanding the accused Chandeshwari Sharma and Chhotu Sharma, (i) the Investigating Officer was not present at the time of remand (ii) notice under Section 41A Cr.P.C was not given by the Investigating Officer (iii) Patna High Court MJC No.1610 of 2023 dt.16-05-2025 check-list and case diary was not produced at the time of remand, and considering the above three reasons, the remand of the accused persons was refused.

24. From perusal of another remand order dated 13.02.2022 passed by the said Magistrate, it appears that after perusing the record, learned Magistrate has found that F.I.R was registered against the accused persons under Sections 341, 323, 354, 406, 420, 504, 506 of the Indian Penal Code and Section 138 of the N.I. Act in which he has found the offence under Sections 354, 406, 420 to be non- bailable in nature. Learned Magistrate has further recorded that in para 10, 11, 12, 13, 26 and 38 of the case diary, the witnesses have supported the occurrence alleged in the F.I.R and after considering the above facts, the accused persons were remanded in judicial custody till 24.02.2022.

25. At this juncture, it is germane to have a glance on the material which was made available by the Police Officer at the time of remand of above two accused persons.

26. From perusal of the case diary, it transpires that the statement of the witnesses recorded by the Investigating Officer during investigation has been mentioned in various Patna High Court MJC No.1610 of 2023 dt.16-05-2025 paragraphs of the case diary which was written till 13.02.2022. It has been mentioned in para 33 of the case diary that raid was conducted in the houses of Kartik Sharma, Chandeshwari Sharma, both sons of Lalji Sharma, and petitioner-Chhotu Sharma but they were not apprehended from the house. It is further mentioned in para 38 of the case diary (which was written on 25.01.2022) that on that date a direction was issued to the Investigating Officer by the Supervising Authority in which Investigating Officer was directed that he should arrest the accused persons after verifying the names and address and in case of absconding, he should proceed for the process under Sections 82 and 83 Cr.P.C. In para 44 of the case diary, it is mentioned by the Investigating Officer that in compliance of the said direction, raid was conducted at the houses of

the accused persons but they were found absconding. Further from perusal of para 50 of the case diary, it appears that both the accused persons were sent to the Court along with forwarding letter and check-list. The copy of check-list pertaining to both accused persons were prepared on 12.02.2022 and copies of the same have been annexed with Patna High Court MJC No.1610 of 2023 dt.16-05-2025 the case diary. From perusal of which, it appears that said check-list is in prescribed performa required under Section 41(i)(b)(ii) of the Cr.P.C in light of an order passed by Govt. of India in compliance of the judgment passed by the Hon'ble Apex Court in Arnesh Kumar v. State of Bihar.

27. From perusal of the check-list, it appears that in column-B, the question that "whether arrest of accused person's is necessary for recovery of relevant assets/properties" was answered in "Yes". Further in column-D, the first question was also answered in "Yes" in which it has been questioned that whether the accused is in position to influence the witnesses.

28. Learned A.P.P has argued that above arrest of the accused has been made in compliance of the directives of D.G.P, Bihar vide order dated 28.05.2021 in compliance of the order passed by Govt. of India read with a judgment passed by the Hon'ble Apex Court in Arnesh Kumar v. State of Bihar in Suo-motu Writ Petition (Civil) No. 01/2020.

29. In this context, the report of the learned Principal District & Sessions Judge, Supaul is relevant to mention here.

Patna High Court MJC No.1610 of 2023 dt.16-05-2025

30. In pursuance to the direction of this Court vide order dated 30.10.2024, the report of Principal District & Sessions Judge, Supaul has been received which has been kept at Flag-Z. The learned Principal District & Sessions Judge, Supaul has observed in its report dated 23 rd of April, 2025 that on 13.02.2022, the In-charge, C.J.M remanded the petitioner in judicial custody after finding the check list produced by the Investigating Officer, as compliance of Section 41(1) and 41(A) of the Cr.P.C, but this fact has not been mentioned in the order-sheet of the relevant date (13.02.2022) and only the reference of case diary has been mentioned in the remand order dated 13.02.2022.

31. The report of the learned Principal District & Sessions Judge, Supaul clearly suggests that In-charge, C.J.M has rightly, legally and correctly remanded two accused persons vide its remand order dated 13.02.2022. However, learned Magistrate has passed the remand order in a mechanical manner and it is not a reasoned and speaking order. Learned Magistrate should have passed the remand order in a speaking and reasoned manner. If the Magistrate could have noted down the submission of check- Patna High Court MJC No.1610 of 2023 dt.16-05-2025 list in its remand order, which was available at the time of remand, the entire matter would not have come before this Court.

32. The order of remand or release (on bail) of any accused is very important order for the court and the Judicial Officers should not pass such order in a casual or mechanical manner. It must be speaking and reasoned order. The Judicial Officers are not mere post-men, they have to analyze

record, whereafter record their satisfaction with regard to the need and requirement of the accused to be detained and kept in custody, which regrettably lacking to some extent in the instant case. Despite of materials available before him, the Magistrate has not assigned reason for remand of the accused.

33. Coordinate Bench of this Court in the case of Kundan Kumar versus State of Bihar passed in Cr. WJC No. 1703 of 2019 had directed the Registrar General of this Court to forthwith communicate the order to the Director, Judicial Academy, Bihar, Patna for imparting training to the Judicial Officers as to how the officers must deal with the remand applications.

Patna High Court MJC No.1610 of 2023 dt.16-05-2025

34. Repeatedly, directions of the Hon'ble Apex Court in the case of Arnesh Kumar (supra) way back in the year 2014, is being side tracked by the Judicial Officers in the State of Bihar.

35. The Registrar General is hereby directed to make an effort to communicate the order of this Court to all the Principal District & Sessions Judges, State of Bihar to sensitize the Judicial Officers as well as Director, Judicial Academy, Bihar for imparting training for strict compliance of the order, so that Judicial Officers may not commit such type of error in future and the directives of the said judgment be complied with.

36. Before parting with this judgment, it is essential to note here that there is one of the grounds for refusal of remand by the concerned Magistrate that the accused persons were produced on 12.02.2022 through constables and the Investigating Officer of this case was not present there. In this context, it is essential to note here that in a cognizable offence, the police officer's power to investigate the case has been prescribed under Section 156 Cr.P.C which reads as under:-

Patna High Court MJC No.1610 of 2023 dt.16-05-2025 "156. Police officer's power to investigate cognizable case. - (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

37. The Police report will be submitted in what manner is prescribed under Section 158 Cr.P.C which reads as follows:-

"158. Report how submitted.-(1) Every report sent to a Magistrate under section 157 shall, if the State Government so directs, be submitted through such superior officer of police as the State Government, by general or special order, appoints in that Patna High Court MJC No.1610 of 2023 dt.16-05-2025 behalf.

(2) Such superior officer may give such instructions to the officer in charge of the police station as he thinks fit, and shall after recording such instructions on such report, transmit the same without delay to the Magistrate."

38. During investigation, the accused persons is remanded Under Section 167 Cr.P.C which reads as follows:-

"167. Procedure when investigation cannot be completed in twenty-four hours.-(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the Patna High Court MJC No.1610 of 2023 dt.16-05-2025 accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

39. In Section 2(O) of the Cr.P.C, the Officer-in- charge of Police station has been defined which reads as follows:-

"(o) "Officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present;"

Patna High Court MJC No.1610 of 2023 dt.16-05-2025

40. From the above discussion of provisions, it becomes clear that only the Investigating Officer of the case or the Officer-in-charge of the Station is empowered to transmit or forward the accused persons before the Magistrate for remand. At this juncture, it is also considerable fact that when an accused is produced before the Magistrate, some questions or queries may require to be put before

the Investigating Officer for passing proper order of remand. If the Investigating Officer is not present before the Magistrate, such query or question cannot be properly answered by Constable or Chaukidar. So, in this view of the matter also, the presence of the Investigating Officer is essential before the Court at the time of remand of an accused person and such type of practice of sending or transmitting the accused through the Constable or Chaukidar is highly deprecated.

41. After going through the above facts, it clearly transpires that regarding transmission and forwarding of the accused before the Magistrate, the procedures as prescribed under Cr.P.C in this regard must be adhered to by the concerned Investigating Officer of the case or the Officer-

Patna High Court MJC No.1610 of 2023 dt.16-05-2025 in-charge of the police station which has not been followed in this case.

42. The Registrar General is directed to send a copy of this order to the Director General of Police, Bihar for strict compliance of the said provision of Cr.P.C regarding manner of forwarding/transmitting the accused for remand.

43. After going through the above discussions, we came to the conclusion that the petitioner, by misconstruing the scope of the legal provision as well as the observation of the Apex Court, has filed the Contempt Petition, because it transpires from the record that there was sufficient material for remand sent by the I.O of the case, however, the order of said remand is not speaking and reasoned.

44. In this view of the matter, the present M.J.C. No. 1610 of 2023 stands dropped.

(S. B. Pd. Singh, J) (P. B. Bajanthri, J) Shageer/-

AFR/NAFR	AFR
CAV DATE	28/10/2024
Uploading Date	16/05/2025
Transmission Date	N/A