

**Court No. - 47**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 12988 of 2022

**Petitioner :-** Rajesh Kumari

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

**Counsel for Petitioner :-** Dinesh Kumar

**Counsel for Respondent :-** G.A.

**Hon'ble Mahesh Chandra Tripathi,J.**

**Hon'ble Nalin Kumar Srivastava,J.**

Heard learned counsel for the petitioner and learned AGA.

Present writ petition has been preferred for quashing the FIR dated 19.6.2022 being Case Crime No.0414 of 2022 under Section 420 IPC, Section 9, 10 U.P. Public Examination (Prevention of Unfair Means) Act, 1998 and Section 66 of the Information Technology Act, P.S. Sikandra, Distt. Agra and for a direction to respondents not to arrest the petitioner pursuant to aforesaid FIR.

The submission is 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 petitioner has been wrongly implicated and could not be arrested. Learned counsel for the petitioner 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. **Nikesh 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 Arnesh 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 judgement 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.

Office is directed to reconstruct the record of this case.

**Order Date :- 16.12.2022**

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