

Court No. - 47

Case :- CRIMINAL MISC. WRIT PETITION No. - 19115 of 2022

Petitioner :- Survadeepta Das

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

Counsel for Petitioner :- Suresh Kumar Maurya

Counsel for Respondent :- G.A.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Nalin Kumar Srivastava,J.

Heard Sri Rudra Prasad Sinha assisted by Sri Suresh Kumar Maurya, learned counsel for the petitioner through video conferencing and Sri J.K.Upadhyay, learned AGA for the State-respondents.

Present writ petition has been preferred for quashing the FIR dated 9.3.2021 being Case Crime No. 116 of 2021, under Sections 420 IPC and 67 of the Information Technology Act, 2008, P.S. Sigra, Distt. Varanasi 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 is 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 :- 12.12.2022

A.K.Srivastava