

RAJASTHAN HIGH COURT, JODHPUR

NOTIFICATION

NO. 05 /SRO/2023

Date: 30.09.2023

Pursuant to the directions issued by the Hon'ble Supreme Court of India in its Judgment dated 31.07.2023 passed in Criminal Appeal No(s) 2207 of 2023 Mohammad Asfak Alam Vs. The State of Jharkhand & Anr. arising out of Special Leave Petition (Crl.) No. 3433/2023 and in line with the directions contained in Arnesh Kumar vs. State of Bihar and Another (2014) 8 SCR 128 as well as other directions, the Rajasthan High Court hereby issues the following guidelines to ensure that police officers shall not arrest the accused unnecessarily and Magistrate shall not authorize detention casually and mechanically:

1. The State Governments shall instruct police officers not to 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 in the case of Mohammad Asfak Alam (supra) and Arnesh Kumar (supra) flowing from Section 41 Cr.P.C.;
2. All Police Officers be provided with a check list containing specified Sub-clauses under Section 41(1)(b)(ii) of the Cr.P.C.;
3. 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;
4. 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;
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 which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;
6. 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;
7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for department action, they shall also be liable to be punished for contempt of court to be instituted before the High Court;

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8. Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the High Court;
9. The aforesaid directions shall not only apply to cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, 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.

The above directions/guidelines shall be followed by all the Sessions Courts and all other Criminal Courts dealing with various offences.

By Order

C.P. Sharma
REGISTRAR GENERAL

No.Gen./XV/99/2023/1979

Date : 30.09.2023 30/9/23

Copy forwarded to the:

01. Secretary General, Supreme Court of India, New Delhi.
02. Registrar General, All High Courts.
03. Registrar-cum-Principal Secretary to Hon'ble the Chief Justice, Rajasthan High Court.
04. P.S. to all the Hon'ble Judges of Rajasthan High Court, Jodhpur/Jaipur Bench Jaipur.
05. Principal Secretary to Government, Law & Legal Affairs Department, Jaipur with the request to kindly obtain the permission from the Bhasha Vibhag for publication of this notification in English as a special case and convey the same to the Superintendent Government Central Press, Jaipur under intimation to this office.
06. The Superintendent, Government Central Press Rajasthan Jaipur for publication in the next issue of the Rajasthan Rajpatra Exemption for publication of the notification in Hindi is being obtained from the Bhasha Vibhag through the Law Secretary. A copy of such Gazette may kindly be sent to this office immediately.
07. Registrar (Admn.), Rajasthan High Court, Jodhpur/Jaipur Bench Jaipur.
08. Director, Rajasthan State Judicial Academy, Jodhpur.
09. All Registrars / OSD, Rajasthan High Court, Jodhpur/Jaipur Bench, Jaipur and HQ Delhi.
10. All the District & Sessions Judges with the directions to circulate the same amongst all the courts of Judgeship for compliance.
11. Principal Secretary, Home Department, Government of Rajasthan, Jaipur.
12. The Secretary, Bar council of Rajasthan Jodhpur with the request to circulate the same amongst all the District Bar Associations.

13. The President, Rajasthan High Court Advocates Association, Jodhpur/Jaipur
14. The President, Rajasthan High Court Lawyers Association, Jodhpur
15. The President, Bar Association, Jaipur.
16. Advocate General/Additional Advocate General, Rajasthan, Jodhpur/Jaipur
17. All Joint Registrars/ Deputy Registrars, Rajasthan High Court, Jodhpur/Jaipur Bench, Jaipur
18. All Assistant Registrar/ Sr. Librarian, Rajasthan High Court, Jodhpur/Jaipur Bench Jaipur.
19. All Administrative Officer (Judl.), Rajasthan High Court, Jodhpur/Jaipur Bench, Jaipur.
for information and necessary action.

C.P. Sharma
REGISTRAR GENERAL

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