

THE HIGH COURT OF ORISSA, CUTTACK

NOTIFICATION

No. 1176/R Dated, the 08th September, 2023

Pursuant to the Judgment dated 31st July, 2023 of the Hon'ble Supreme Court of India in Criminal Appeal No(s). 2207 of 2023 (*Md. Asfak Alam Vrs. The State of Jharkhand & Anr*) arising out of SLP (Crl) No.3433 of 2023, the Hon'ble Court has been pleased to issue the following guidelines in line with the decision in the *Arnesh Kumar Vrs. State of Bihar [2014] 8 SCR 128* as well as other directions, to ensure that police officers shall not arrest the accused unnecessarily and Magistrate shall not authorize detention casually and mechanically;

- (1) The State Government to instruct its 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 under 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 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;
- (6) Notice of appearance in terms of Section 41-A Cr.P.C. 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 the High Court having territorial jurisdiction.

(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 directions shall not only apply to the case 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 terms which may be less than seven years or which may extend to seven years, whether with or without fine."

The above directions of the Court shall be followed by all the Sessions Courts and all other and Criminal Courts dealing with various offences, scrupulously.

By Order of the Court,

Pratap Kumar Patra
08/09/2023

(Pratap Kumar Patra)

REGISTRAR GENERAL