

Weekly meeting
Dima Hasao District Judiciary

Dated: 21/03/2024

Proceedings of weekly meeting of Judicial Officers under Dima Hasao District Judiciary, held on 21.03.2024 at 3.30 PM in the office Chamber of the District & Sessions Judge, Dima Hasao.

Under the guidance of the District & Sessions Judge there was discussion on:- **Section 41 and 41 A of Cr.P.C and its relation with Arnesh Kumar vs State of Bihar**

Section 41 of the Code of Criminal Procedure (CrPC) allows police officers in India to arrest without a warrant if they reasonably suspect someone has committed a serious offense (cognizable). The arrest must be based on credible information, and it serves public interest by preventing further offenses and preserving evidence. After arrest, the officer must inform the individual of the grounds, their right to bail, and produce them before a magistrate within 24 hours. Recording reasons for arrest is necessary unless impracticable.

The Supreme Court mainly focused on two out of the ten instances [Section 41(1) (b) and Section 41(1)(ba)] to put a bridle on the police's power to arrest casually.

Broadly power of police to arrest without a warrant can be segregated into two categories: -

- Arrest in a cognizable offense with punishment for imprisonment upto 7 years provided in section 41(1)(b)
- Arrest in a cognizable offense with punishment for imprisonment of more than 7 years or with a death sentence provided in section 41(1) (ba)

Steps of inquiry

1. Initial Investigation: Police must collect evidence to determine if a cognizable offense is prima facie evident against any accused. Arrest should not be solely based on a mechanically registered complaint. Accused can be summoned for examination under Section 160 of the CrPC.
2. Offense Severity: Police must ascertain if the offense is punishable by up to 7 years or more than 7 years/death sentence.

3. Decision on Arrest: Based on offense severity, provisions under Section 41(1)(b) and 41A of the CrPC apply for offenses punishable up to 7 years. For offenses punishable with more than 7 years or death sentence, provisions under Section 41(1)(ba) and 41A are applicable to decide on the necessity of arrest.

Before making an arrest under Section 41(1)(b)(ii) of the CrPC, the Investigating Officer (IO) must record cogent reasons in the case diary, demonstrating thoughtful consideration. The IO should prepare a checklist covering specified sub-clauses of Section 41(1)(b)(ii), detailing reasons and materials necessitating the arrest. The Public Prosecutor must forward this checklist to the court when presenting the accused, enabling judicial scrutiny during remand applications. This process ensures transparency, accountability, and judicial oversight in arrests, safeguarding the rights of the accused. Section 41 of the CrPC serves as a crucial provision that balances law enforcement needs with the rights of individuals, ensuring that arrests are made based on reasonable suspicion and with proper procedural safeguards.

The relation between Section 41 of the Code of Criminal Procedure (CrPC) and the landmark judgment in the case of Arnesh Kumar v. State of Bihar is significant.

The Supreme Court's Arnesh Kumar case addressed the misuse of arrest powers by police in dowry harassment cases under Section 498A of the IPC. It emphasized preventing arbitrary arrests and outlined guidelines to protect individual rights. The judgment stressed the importance of following due process and exercising caution, especially in non-bailable offense cases. It highlighted adherence to Section 41 of the CrPC, ensuring arrests are based on reasonable suspicion and credible evidence. Ultimately, the case reaffirmed fundamental principles of criminal justice, including presumption of innocence, protection against arbitrary arrests, and adherence to fair procedures under Section 41 of the CrPC.

In the landmark judgment of Arnesh Kumar v. State of Bihar & Anr. (2014), the Supreme Court of India laid down several guidelines to prevent the arbitrary arrest and detention of individuals which are:

1. Avoid Automatic Arrests: Police must assess before arresting
2. Reasons for Arrest: Officers need credible reasons to believe the accused committed the offense, ensuring arrest necessity for victim protection or investigation.

3. Assess Necessity: Arrest should serve investigative purpose beyond custodial interrogation.
4. Record Reasons: Written documentation of arrest reasons is mandatory; failure leads to disciplinary action.
5. Caution with Family Members: Arresting family members without solid grounds risks innocent individuals' harassment.
6. Anticipatory Bail: Those fearing arrest can seek anticipatory bail under Section 498A to prevent misuse of arrest powers.

The Supreme Court observed, "We believe that no arrest should be made only because the offense is non-bailable and cognizable and therefore, lawful for the police officers to do so".

It is a misconception among police officials that Arnesh Kumar stipulates that when the offense is cognizable and punishable with imprisonment of more than 7 years, then an arrest has to be made. In fact, arrest for such offenses is not mandatory. In such cases, an arrest can be made in view of the facts and circumstances of the case and the gravity of the offense.

Section 41A of the CrPC:

Section 41A of the Code of Criminal Procedure (CrPC) requires police officers making warrantless arrests to inform the arrested person of the grounds and specify the offense. The notice mandates the person to appear before the officer at a set time and place, facilitating cooperation with the investigation without immediate custody. Additionally, it allows voluntary appearance, enabling the individual to avoid immediate arrest by cooperating with the investigation as per the notice's requirements.

Procedure when a police officer decides that an arrest is not to be made

Arrest is not mandatory merely because the offence is punishable with more than 7 years of imprisonment. The existence of the power to arrest is one thing and the justification of its exercise is another thing. Thus a police officer may decide that the arrest of a person is not needed under the provisions of Section 41(1) CrPC covering both sub section 41(b) and 41(ba).

The Supreme court has directed that

"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; 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".

When deciding whether to arrest an accused under Section 41A of the CrPC, if arrest is not deemed necessary, a notice must be issued to the accused to cooperate in the investigation. Conversely, if arrest is warranted, no notice under Section 41A is required. This decision must be made promptly, and if arrest is deemed unnecessary, it should be communicated to the magistrate within two weeks. Similarly, a notice under Section 41A must be served to the accused within two weeks of case initiation. However, if the decision cannot be made within this timeframe due to case complexity, the Superintendent of Police can extend the time after providing written reasons. These reasons must be documented in the case diary of the investigating officer.

If the decision is made that the arrest of the accused is unnecessary and communicated to the court, the Investigating Officer (IO) must issue a notice under Section 41A of the CrPC to the accused. This is a mandatory requirement, and the IO must issue the notice, providing reasonable time for the accused to appear. There is no discretion for the IO in this matter if the decision aligns with the provisions of Section 41(1)(b) or 41(1)(ba).

Non-compliance with Section 41 and Section 41A of the Code of Criminal Procedure (CrPC)

Bail and Sections 41 and 41A of the Code of Criminal Procedure (CrPC) in India are intertwined, as they establish procedural safeguards for arrests and the rights of the accused. Non-compliance with Section 41 regarding arrests without a warrant may lead to suspicions of arbitrary arrest, potentially making bail easier to obtain. Courts scrutinize arrest legality under Section 41 during bail hearings and may favor bail if arrest procedures were not followed, imposing lighter bail conditions reflecting concerns over procedural integrity. Section 41A allows voluntary cooperation with police investigations, potentially influencing bail decisions favorably if individuals voluntarily participate before arrest. The absence of notice under Section 41A during arrest may suggest procedural lapses, impacting bail hearings, especially if the accused claim a lack of opportunity to cooperate voluntarily.

CHECKLIST and Section 41 Cr.P.C

The checklist referred to in the context of Section 41 of the Code of Criminal Procedure (CrPC) pertains to the guidelines established by the Supreme Court of India in the case of *Arnesh Kumar v. State of Bihar & Anr.* (2014). Although not explicitly outlined in Section 41 itself, the checklist is based on the principles of Section 41 and serves as a guide for police officers to follow before effecting arrests.

Here's the relationship between the checklist and Section 41 CrPC:

1. Guidance for Arrests under Section 41:

Assessing Arrest Necessity: Section 41 of the CrPC allows warrantless arrests based on reasonable grounds, preventing arbitrary or unnecessary arrests. The checklist aids officers in evaluating arrest necessity.

- **Recording Arrest Reasons:** Section 41 mandates officers to record arrest reasons, ensuring accountability and guiding proper documentation for warrantless arrests.

2. Promotion of Procedural Fairness:

Protecting Rights: Section 41 safeguards individual rights by requiring justified arrests. The checklist reinforces this by preventing arbitrary arrests, fostering procedural fairness.

- **Balancing Enforcement and Rights:** Section 41 maintains a balance between law enforcement and individual liberties. Likewise, the checklist ensures arrests align with the law while respecting the rights of the accused.

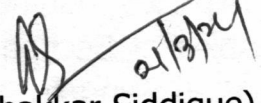
3. Prevention of Misuse of Arrest Powers:

Preventing Arbitrary Arrests: Section 41 and the checklist deter misuse of arrest powers by requiring justified and necessary arrests. The checklist adds scrutiny, preventing arbitrary or unnecessary arrests.

- **Promoting Transparency:** Both ensure transparency by demanding valid justifications for warrantless arrests, preventing abuse of power, and ensuring law enforcement accountability.

In summary, while the checklist is not explicitly mentioned in Section 41 of the CrPC, it aligns with the principles of Section 41 by providing guidance to police officers on conducting arrests in a manner that upholds the rights of individuals and promotes procedural fairness. The checklist serves as a practical tool to implement the requirements of Section 41 and prevent the misuse of arrest powers.

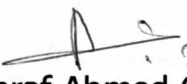
With this the meeting ended with a formal vote of thanks.

A handwritten signature in black ink, appearing to read 'AS' followed by a stylized flourish.


(Shri Abubakkar Siddique)
District & Sessions Judge
Dima Hasao, Haflong


(Shri Nayan Jyoti Dutta)
Civil Judge (Sr.Div) & Asstt
Sessions Judge, Dima Hasao.


21.03.2024
(Smti. Sonamoni Chanda)
Chief Judicial Magistrate,
Dima Hasao.


21/3/24
(Shri Ashraf Ahmed Choudhury)
Addl. Chief Judicial Magistrate,
Dima Hasao.


21/3/24
(Shri Gautam Daimari)
Secretary
District Legal Services Authority
Dima Hasao.


21.03.24
(Shri Nitesh Sharma)
Civil Judge (Jr.Div) No.2
Dima Hasao.


21/03/2024
(Shri Aditya Vikram Das)
Civil Judge (Jr.Div) No.1
Dima Hasao.


21.03.24
(Shri Hadi Alam)
Judicial Magistrate First Class,
Dima Hasao.