

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.256 of 2022**

Arising Out of PS. Case No.-379 Year-2020 Thana- JAMUI District- Jamui

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Kumar Dushyant S/o Ravindra Mishra R/o village- Bithalpur, P.S. and District- Jamui

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Home Police, Bihar, Patna Bihar
3. The Director General of Police, Bihar, Patna Bihar
4. The Deputy Inspector general of Police, Central Bihar, Patna Bihar
5. The District Magistrate, Jamui Bihar
6. The Superintendent of Police, Jamui Bihar
7. The Sub-Divisional Police Officer, Sadar, Jamui Bihar
8. The Officer-in-Charge-cum-Investigation Officer, Jamui Town Police Station, District- Jamui Bihar
9. Kumari Anchala D/O Parsuram Mishra R/O- Bithalpur, P.S. and District- Jamui
10. Chandan Kumar S/O Not Known the then S.H.O. Jamui Town, Presently Posted as Barhiya S.H.O., P.S. and District- Lakhisarai
11. Dr. Rakesh Kumar S.D.P. Jamui P.S. and District- Jamui
12. Pramod Mandal S/O not known the then Suprentendent of Jamui, District- Jamui

... .. Respondent/s

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**Appearance :**

For the Petitioner/s	:	Mr. Satya Prakash Parasar, Advocate
For the State	:	Mr. Iqbal Asif Niazi, AC to GP-5
For the R.No.9/Informant	:	Mr. Niraj Kumar, Advocate
For the R. No. 10	:	Mr. Madhav Raj, Advocate
For the R. No. 11	:	Mr. Prashant Kumar, Advocate
For the R. No. 12	:	Mr. Sanjay Kumar, Advocate Mr. Saket Tiwary, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA**  
**CAV ORDER**

**Date : 30-03-2026**

The instant petition has been filed seeking the following reliefs:-

*“(i) For issuance of writ in the nature of mandamus*



*commanding and directing the respondents authority to initiate a disciplinary proceeding against the erring Officer-in-Charge Jamui Town Police Station and Investigating Officer Jamui Town PS Case No. 379 / 2020 in connivance with Superintendent of Police and SDPO, Jamui who have illegally arrested the petitioner.*

*(ii) For further prayer to hold the officers involved in the present case guilty of contempt of court as they have willfully and deliberately disobeyed the directions of the Hon'ble Apex Court rendered in the case of **Arnesh Kumar Vs. State of Bihar** and the mandate of Article 144 of the Constitution of India.*

*(iii) For further direction to award exemplary damages to the petitioner as he suffered injury of mental and prestige due to negligent/arbitrarily/malafide act of the officers involved in the present case.*

*(iv) And for any other relief/reliefs for which this*



*Hon'ble Court may deem fit and proper."*

02. Brief facts leading to the institution of the present writ petition, as culled out from the record are that on a written report given by respondent no. 9 to the police, Jamui P.S. Case No. 379 of 2020 on 26.07.2020 under Section 420 of the IPC and Section 66(c)(d) of the Information Technology Act, 2000 was instituted. The allegation in the written report was about hacking of Facebook account of the informant and posting of obnoxious messages on the said account. The investigation was handed over to one Dinesh Ram, Sub-Inspector of Police who made a call to the petitioner on 03.09.2020 telling him that the petitioner was wanted in the present case. The petitioner, thereafter, approached the said police official through a lawyer and when the lawyer had a meeting with the police official, he told the petitioner to go and meet the Investigating Officer as allegation was not serious and appeared to be trivial in nature. The petitioner went and met with the Investigating Officer. The Investigating Officer told him about pressure from his senior officials for making out the arrest of the petitioner. Further case of the petitioner is that, thereafter, the father of the petitioner along with his advocate approached the concerned Station House Officer, the respondent no. 10 herein and prayed for a fair



investigation in the case. He also pleaded that the notice under Section 41-A of the CrPC be served upon the petitioner or alternatively he might be enlarged on bail since the offence as alleged in the FIR was bailable in nature and Section 420 of the IPC was wrongly inserted without any allegation for commission of the said offence. The respondent no. 10 disclosed that Section 420 of the IPC was inserted in the list of offences to make the case non-bailable and he was so instructed by the Superintendent of Police. Thereafter, the father of the petitioner approached the Sub-Divisional Police Officer again pleading for a fair supervision. Although the Sub-Divisional Police Officer showed his surprise about inclusion of Section 420 of the IPC in the light of allegation made in the FIR, he mechanically put a supervision note finding the case true under Section 420 of the IPC as well. Further case of the petitioner is that on 24.11.2020, the petitioner was sent by the Principal of the School to attend a Seminar at the District Education Office, Jamui which was just adjacent to the Office of the Superintendent of Police, Jamui. After the end of the seminar, while the petitioner has been returning to his village on Scooty, he was waylaid by some unknown persons in plain dress riding two motorcycles who snatched his mobile and one of them identified himself as the



Station House Officer of Jamui Police Station. These persons forcibly brought the petitioner to the police station and in the police station, the Station House Officer used abusive language against the petitioner. When the petitioner was apprehended, the country was under the grip of COVID-19 pandemic. The petitioner was kept in the police station till late night of the next day and he was not allowed to meet any of his family members, who were not even informed about the arrest of the petitioner. Getting the news of abduction of the petitioner, his father came to the police station where he found that the petitioner was in police custody. When the father of the petitioner tried to meet him, he was shooed away by the police officials with threat that he would also be falsely implicated in some case and was told that petitioner would be sent to jail. The petitioner was sent to the Court of learned Chief Judicial Magistrate, Jamui in handcuffs. The petitioner brought to the notice of the learned Chief Judicial Magistrate the *mala fide* act of the Investigating Officer and Station House Officer and submitted that the Investigating Officer has no power to arrest in the said case under the provisions of Section 41 of the CrPC. Thus, against the act of the police officials claiming it to be illegal, the petitioner has approached this Court in the present writ petition.



03. Counter affidavits have been filed on behalf of respondent nos. 6, 10, 11 & 12.

04. Heard learned counsels for the parties.

05. Learned counsel for the petitioner submitted that the action of respondent-authorities violates the right of the petitioner provided under Article 14, 19 and 21 and also violates Article 144 of the Constitution of India. The petitioner all along cooperated with the police authorities and there was no apprehension of petitioner fleeing away and hampering the investigation in the matter. The learned counsel further submits that the *mala fide* of the police officials is writ large on the face of the record. Though from the written report it is clear that the only allegation was against some unknown person that he hacked the Facebook account of the respondent no. 9 still offence under Section 420 of the IPC was inserted in the FIR. Therefore, inclusion of Section 420 of the IPC is completely arbitrary and it appears the same has been inserted to make the case serious and non-bailable. As it is apparent from the record that no *prima facie* case under Section 420 of the IPC is made out in the given facts and circumstances.

06. Learned counsel further submitted that, moreover, offences under the Information Technology Act, 2000 are of



special category. It is a self contained legislation and a separate kind of procedure has been prescribed for investigation/inquiry/trial. Section 72 of the Information Technology Act provides that only the officers who are not below the rank of the Inspector can investigate the offences alleged to have been conducted under the provisions of IT Act. But for the reasons best known to the SHO and the Superintendent of Police, Jamui, a Sub-Inspector has been appointed as the Investigating Officer of the case and the investigation got vitiated by this very fact.

07. Learned counsel further submitted that there is complete violation of the guidelines given by the Hon'ble Supreme Court in the case of *Arnesh Kumar Vs. State of Bihar and Anr., (2014) 8 SCC 273* wherein the Hon'ble Supreme Court deprecated the tendency of the police officials arresting the accused unnecessarily and the learned Magistrate authorizing such detention casually and mechanically. Learned counsel further submits that these guidelines were issued while considering a case under Section 498A IPC but subsequently in the case of *Md. Asfak Alam Vs. The State of Jharkhand, 2023 INSC 660* the Hon'ble Supreme Court clarified that these guidelines would be equally applicable to the cases registered



for other offences wherein the punishment extends up to seven years. Learned counsel further submitted that although no offences under Section 420 of the IPC could have been inferred from the allegation made in the written report of respondent no. 9 still, considering the guidelines issued in the case of *Arnesh Kumar*(supra) and *Asfak Alam* (supra) the police authorities could not have arrested the petitioner. The police officials acted beyond the mandate of law and did not follow the provisions of Section 41(1)(b)(ii) of the CrPC. No reasons in writing were given necessitating the arrest of the petitioner. Therefore, the liberty of the petitioner was curtailed without any sanction of law and hence, the police officials are in contempt of the orders of the Hon'ble Supreme Court passed in the case of *Arnesh Kumar*(supra) and *Asfak Alam* (supra).

08. The petitioner is a teacher and he has all along been performing his duty and never absconded, still, he had been wrongly arrested by the police officials. Learned counsel further submitted that the police officials were predetermined to put the petitioner behind the bar and issued press note and got the news published in local newspaper that a serious and heinous kind of crime has been committed by the petitioner. This news was circulated on Whatsapp through the mobile



number 9386382267 by the respondent no. 10 and it shows his personal bias in the case. While the petitioner was taken to the Court of the learned CJM, he was put under handcuffs and was taken to the Court on foot through a busy market to malign his image. Even the application for remand before the learned CJM is full of wrong facts. The remand was sought on the ground that release of the petitioner would create law and order problem but the fact was ignored that the petitioner being a teacher was on his duty even on the date when he was arrested. Therefore, allowing of remand by the learned CJM, Jamui was also illegal. Learned counsel, thus, submitted that undue haste has been shown by the Investigating Officer in effecting the arrest of the petitioner and the police authorities acted in most *mala fide* and arbitrary manner against the petitioner. Learned counsel further submitted that the fact was not considered that life and liberty of a citizen is sacrosanct and making arrest in such trivial matter without any material runs contrary to the fair play in action and goes against the mandate of law and judicial pronouncements made from time to time by the Hon'ble Supreme Court. Thereafter, learned counsel referred to the case of ***D.K. Basu Vs. State of W. Bengal, (1997)1 SCC 416*** wherein certain guidelines were issued to be followed in all cases of arrest or



detention. Learned counsel further submitted that none of the family members of the petitioner were informed about his arrest and this fact is clear from the arrest memo dated 24.11.2020 wherein in the column of persons who have been informed about the arrest, it has only been mentioned that information was given to family member (*parijan*) without specifying the name or relationship of the family member. The learned counsel reiterated that the arrest of the petitioner violates the guidelines issued by the Hon'ble Supreme Court in the case of *Arensh Kumar*(supra), *Asfak Alam* (supra) and *D.K. Basu* (supra) and hence makes the respondent-authorities liable for contempt.

09. Learned counsel also referred to the case of *Joginder Kumar Vs. State of U.P. and Ors., AIR 1994 SC 1349* wherein the Hon'ble Supreme Court issued certain guidelines with regard to right of an arrested person flowing from Article 21 and 22(1) of the Constitution of India. Learned counsel further submitted that for illegal detention of the petitioner, the authorities should be heavily penalized and departmental proceedings be initiated against them and they should be proceeded for committing Contempt of Court and petitioner should be adequately compensated.

10. On the point of compensation, learned counsel



referred to the case of ***Dr. Rini Johar & Anr. Vs. State of M.P. & Ors., AIR 2016 SC 2679*** wherein the Hon'ble Supreme Court finding that the conditions precedent of procedure of arrest were not followed and liberty of the petitioners was curtailed, a compensation of Rs. 5 lacs was awarded to each of the petitioners to be paid by the State. Learned counsel also referred to the decision of the Hon'ble Division Bench of this Court in the case of ***Neeraj Kumar @ Neeraj Singh Vs. The State of Bihar and Ors.*** passed in ***CrWJC No. 2761 of 2025*** dated 13.11.2025 and the decision of the High Court of Delhi in the case of ***Rakesh Kumar Vs. Vijayanta Arya (DCP) and Ors.*** in ***Cont. Case No. 480/2020*** wherein the petitioner has been adequately compensated for his unauthorized detention.

11. Learned counsel also referred to the case of ***S. Rajarethinam(deceased) & Ors. Vs. The State of Tamil Nadu and Ors. in WMP No. 37619 of 2017*** and ***Jakka Vinod Kumar Reddy Vs. Mr. A.R. Srinivas, DCP, 2022 SCC OnLine TS 1190*** wherein the learned Single Judge of Telangana High Court finding that notice was not served in terms of guidelines of ***Arnesh Kumar*** (supra) held the respondents to be contemnors having willfully disobeyd the judgment of the Hon'ble Apex Court and ordered them to be punished for Contempt of Court.



12. Learned counsel appearing on behalf of respondent no. 1-6 submitted that the contention raised on behalf of the petitioners are not sustainable. After registration of Jamui P.S. Case No. 379 of 2020 the matter was investigated. It has been alleged by the informant that some unknown person, after hacking her Facebook ID, has been uploading filthy messages and obscene texts in her name. During investigation, the IP address of login record for the period of 09.02.2020 to 26.02.2020 was gathered and on further investigation mobile number 7903878412 was tracked which was being used by the culprit. The holder of the said mobile number was found to be present petitioner who was, thereafter, arrested and produced before the Court. The cell phone used by the petitioner in commission of crime was recovered from him. The petitioner was produced before the learned CJM, Jamui who remanded him to judicial custody finding the material against him to be sufficient for his remand. Thus learned counsel submitted that there is no merit in the present writ petition and the same be dismissed.

13. Learned counsel appearing on behalf of the respondent no. 10 vehemently contended that the respondent no. 10 has not committed any illegal or wrongful act while being



posted as SHO at Jamui Police Station. Learned counsel further submitted that the answering respondent has an unblemished service career and during his entire tenure no allegation has been levelled against him except for the present one. Learned counsel adopting the argument of the counsel appearing on behalf of the respondent no. 1-6 further submitted that after proper investigation, the petitioner was arrested on 24.11.2020 following the due procedure as mandated under the law. Learned counsel further submitted that when the petitioner was brought to Jamui Police Station, the situation became worse causing law and order problem. A checklist was prepared in compliance of the guidelines of Hon'ble Supreme Court rendered in the case of *Arnesh Kumar* (supra). The petitioner was forwarded to the judicial custody on 25.11.2020 after considering the entire material produced by the police and reasons assigned for forwarding the petitioner for judicial custody. Learned CJM, Jamui remanded the petitioner to judicial custody and thus the action of the respondent no. 10 has been affirmed by the judicial order dated 25.11.2020. But this order was not challenged and after lapse of about two years, the instant writ has been filed. Thereafter, cognizance has also been taken. Learned counsel further submitted that there has been no



non-compliance of Section 41(1) of the CrPC. The informant and accused were the local residents under the jurisdiction of Jamui Police Station and as soon as the news of arrest of the petitioner spread, there appeared apprehension of law and order problem. Learned counsel further submitted that initially case was registered against unknown for committing cheating and hacking of the Facebook account of the informant, a lady, without her consent and thereafter unwanted messages were sent from her account and the name of the petitioner and his Facebook account and his ID and his mobile phone number surfaced in course of the investigation. Learned counsel further submitted that bald allegations of connivance between the police officials has been made but the same is completely baseless. Further allegation of non-compliance of orders of Hon'ble Supreme Court is not correct and the answering respondent never defied any command of law knowingly and intentionally. The answering respondent always acted in accordance with law. Learned counsel further submitted that the instant writ petition has been filed after much delay and not for getting justice rather to put pressure on the local police officials to obey the commands of the petitioner and to compel them not to take any steps against the misdeeds of the petitioner. Nothing has come



on record that the answering respondent has got any malice to falsely implicate the petitioner in the present case and hence all the allegations made against the petitioner are not believable or sustainable. Hence there is no merit in the present writ petition.

14. Learned counsel appearing on behalf of the respondent no. 11 submitted that during the relevant period, the respondent no. 11 was posted as Sub-Divisional Police Officer, Jamui Sadar. Learned counsel for the respondent no. 11, reiterating the submissions made by the learned counsels for other respondents, submitted that during investigation sufficient material was gathered against the petitioner for his involvement in the offence of very serious nature of threatening and abusing the dignity of a girl and outraging her modesty by sending viral posts tarnishing her honour and reputation in the society. The matter relates to assassination of character and image of a girl by the petitioner who is a teacher by profession. The petitioner was arrested and produced before the learned CJM with Memo of arrest, seizure list, checklist, photocopy of subscriber details, photocopy of medical prescription and photocopy of case diary. The petitioner was remanded on judicial custody on 25.11.2020. It is also pertinent to note here that no orders were passed by the learned CJM on the application filed by the petitioner alleging



illegal arrest. Learned counsel further submitted that due compliance was made of Section 41(1) and Section 41-A of the CrPC in the light of decision of the Hon'ble Apex Court in the case of *Arnesh Kumar* (supra) and *Asfak Alam*(supra).

15. Learned counsel appearing on behalf of the respondent no. 12 submitted that respondent no. 12 was posted as Superintendent of Police during the relevant time at Jamui. Learned counsel further submitted that initially one Sub-Inspector namely, Dinesh Ram was made the Investigating Officer by the then SHO, Jamui Police Station, but when the matter came to the notice of the answering respondent, he immediately directed the Investigating Officer to hand over the investigation to the Police Inspector-cum-SHO, Jamui and further issued certain directions vide Order dated 17.11.2020. Learned counsel further submitted that on the basis of complaint made by the informant, investigation was made and the involvement of the petitioner came to the light. Subsequently, the petitioner was apprehended on 24.11.2020 by the Police Inspector-cum-SHO, Jamui Police Station and arrest memo was prepared and produced before the learned CJM who remanded the petitioner to the judicial custody vide order dated 25.11.2020. Learned counsel reiterated the submission made on



behalf of the other respondents regarding the involvement of the petitioner in the present case and adopted the argument of other respondents. Learned counsel further submitted that there has been no non-compliance of any of the mandatory provisions or the guidelines of the Hon'ble Supreme Court. Rather the guidelines have been followed in letter and spirit. There is no denial by the petitioner that the mobile phone used in the crime did not belong to him. The petitioner has committed the offence of outraging the modesty of a female and tarnishing her image by circulating obscene posts. Learned counsel further submitted that the allegations made by the petitioner with regard to connivance of the answering respondents with other police officials are completely false, fabricated and figment of imagination of the petitioner. The present writ petition has been filed to pressurize the police officials and the writ petition is devoid of any merit and fit to be dismissed.

16. Learned counsel for the respondent no. 9(informant) adopted the arguments of the learned counsels for the respondent nos. 1-6, 10, 11 and 12.

17. I have given my thoughtful consideration to the issue at hands. From the record, it also transpires that initially one Sub-Inspector Dinesh Ram was made the Investigating



Officer but subsequently, respondent no. 10, the then SHO was handed over the charge of investigation by the order dated 17.11.2020 by the Superintendent of Police, Jamui. Therefore, for all purposes respondent no. 8 and respondent no. 10 are the same person.

18. There are some disturbing aspects of the present matter. The petitioner has alleged non-compliance of Section 41(1) and Section 41-A of the CrPC as well as the guidelines issued by the Hon'ble Supreme Court in the case of *Arnesh Kumar* (supra) and *Asfak Alam*(supra). On the other hand, the answering respondents have denied any non-compliance of mandatory provisions of law or the guidelines of the Hon'ble Supreme Court.

19. Section 41(1) and Section 41-A of the CrPC reads as under:-

***“41. When police may arrest without warrant.***

*(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person -*

*(a) [ who commits, in the presence of a police officer, a cognisable offence;*  
*(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognisable offence 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, if the following conditions are satisfied, namely :-*

*(i)the police has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;*

*(ii)the police officer is satisfied that such arrest is necessary -*

*(a)to prevent such person from committing any further offence; or*

*(b)for proper investigation of the offence; or*

*(c)to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or*

*(d)to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer;or*

*(e)as unless such person is arrested, his presence in the Court whenever required cannot be ensured and the police officer shall record while making such arrest, his reason in writing;*

*[Provided that a police officer shall, in all the cases where the arrest of a person is not required under the provision of this sub-section, record the reasons in writing for not making the arrest.]*

***[41A. Notice of appearance before police officer.--***



*(1) <sup>2</sup>[The police officer shall], in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.*

*(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.*

*(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.*

*<sup>3</sup>(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.]”*

Therefore it is only under certain conditions that a police officer may arrest a person without an order from a Magistrate or without any warrant.

20. In the case of **Arnesh Kumar** (supra) the Hon'ble Supreme Court in paragraph no. 11 gave the following directions:-



*“11. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:*

*11.1 All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;*

*11.2 All police officers be provided with a check list containing specified sub- clauses under Section 41(1)(b)(ii);*

*11.3 The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;*

*11.4 The Magistrate while authorising 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 authorise detention;*

*11.5 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;*

*11.6 Notice of appearance in terms of Section 41-A 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;*

*11.7 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 High Court having territorial jurisdiction.*

*11.8 Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.”*

Further in the case of ***Asfak Alam*** (supra) the Hon'ble Supreme court in para 12 held that the directions of ***Arensh Kumar***(supra) shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act but also to 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. In this background, the arrest of the petitioner is to be tested.

21. From the facts of the case and averment made in the counter affidavit of the respondents, it is much evident that no notice was served upon the petitioner following the mandate of Section 41-A of the CrPC directing him to appear before the Investigation Officer considering the fact that the maximum sentence prescribed for offences mentioned in the FIR was seven years with fine. There has been no submission before this Court or any averment in the counter affidavit of any of the respondents that a notice under Section 41-A was served upon the petitioner. Though general averments have been made about



compliance of Section 41(1), Section 41-A of CrPC and guidelines of Hon'ble Supreme Court regarding arrest and detention of an accused, no specific averment has been made about the satisfaction being recorded by the police officer for arrest of the petitioner, no documents have been brought on record by any of the respondents showing such satisfaction in terms of Section 41(1)(b)(ii) of CrPC.

Perusal of the remand application, which has been annexed as Annexure-5 to the writ petition and not denied by the respondents, shows even while seeking detention for a fortnight, only averment which has been made for keeping the petitioner in custody is that there was sufficient evidence against him and his release on bond would give rise to law and order situation but details are completely lacking. The Hon'ble Supreme Court in the case of *Arnesh Kumar* (supra) has made it very much clear that non-compliance of the guidelines would render the erring police officials liable for departmental action as well as for Contempt of Court. Though Annexure-6 contains the order of the learned CJM dated 25.11.2020, it appears petitioner was produced before the Court with Memo of arrest, seizure list without seized articles, checklist, photocopy of subscriber details, photocopy of medical prescription and



photocopy of case diary. None of the respondents produced the checklist or any document to bring forth the fact before this court why arrest of the petitioner was necessary though maximum sentence prescribed for the offences mentioned in the FIR was imprisonment for seven years and fine. Therefore, there is non-compliance of Section 41(1)(b)(ii) of the CrPC as no material has been brought on record to show that the arrest of the petitioner was necessary at the first instance. Mere bland assertion about release of the petitioner giving rise to law and order situation would not suffice to meet the obligation under Section 41(1)(b)(ii) of the CrPC. It also runs counter to the guidelines issued by the Hon'ble Supreme Court in the case of *Arnesh Kumar*(supra) and *Asfak Alam*(supra).

22. The liberty of a person is precious and the guidelines issued by the Hon'ble Supreme Court in the aforementioned cases of *Arnesh Kumar*(supra) and *Asfak Alam*(supra) are only to ensure that police officers do not unnecessarily arrest any person and the Magistrate do not mechanically remand any person. Once the Investigating Officer/respondent-authorities came to know about the involvement of the petitioner in the case in hand, they were supposed to furnish him a notice within two weeks under



Section 41-A of the CrPC but no such steps were taken. Rather the petitioner was arrested on 24.11.2020 and brought before the learned CJM, Jamui on 25.11.2020.

23. Even the remand of the petitioner by the learned CJM does not fulfil the requirement of the Hon'ble Supreme Court in the case of *Arnesh Kumar* (supra) because the order dated 25.11.2020 authorizing the detention merely records that the offence is non-bailable and there were sufficient material available for remanding him from case diary. Such mechanical order by a judicial officer needs to be deprecated in strongest terms. Authorizing detention without recording reasons regarding satisfaction of the Court and, the same being non-speaking would be in violation of the guidelines of the Hon'ble Supreme Court and would make such judicial officer liable for departmental action. However, considering that it is a judicial order, this Court would not like to interfere with such order under its writ jurisdiction and leave it to the disciplinary authority to take appropriate action on administrative side. However, the contention made on behalf of the respondents that the order of the learned CJM dated 25.11.2020 remanding the petitioner into custody and subsequently cognizance being taken have put a cloak of legality over the previous action of the



IO/SHO, Jamui in arresting the petitioner without notice, is without any substance. If the initial act is bad, then all subsequent proceedings become tainted and would suffer from illegality. In this regard reliance could be placed on the decision of the Hon'ble Supreme court in the case of ***State of Punjab Vs. Davinder Pal Singh Bhullar, (2011) 14 SCC 770***. The orders of the learned CJM could not undone the previous act of the police authorities, if the same has been against the law of the land as the authorities must be reminded that under Article 144 of the Constitution of India, all authorities, civil and judicial, in the territory of India are under a bounden duty to act in the aid of the Hon'ble Supreme Court and any guidelines issued by the Hon'ble Supreme Court is to be obeyed without demur by the authorities.

24. The right of the petitioner to personal liberty has been curtailed not by a procedure established by law but in an arbitrary manner by the IO who also happened to be the SHO. Hence, the respondent no.10 (the then SHO), has defied the directions of the Hon'ble Supreme Court in the case of ***Arnesh Kumar(supra) & Asfak Alam(supra)*** wherein it has been held that for the event of non-service of notice under Section 41-A of the CrPC and for arrest without recording the reasons



necessitating the arrest, contempt proceeding would be initiated, against the erring official and has, thus, made himself liable for initiation of contempt proceeding.

25. So far as other respondents, namely the Sub-Divisional Police Officer and the Superintendent of Police, Jamui are concerned, being not directly involved in the arrest of the petitioner or being liable for ensuring service of notice, it could not be said that they are in contempt of the orders of the Hon'ble Supreme Court. However, being the superiors of respondent no. 10, the then IO and also the then SHO, not taking appropriate action in accordance with law against him renders these two respondents liable for departmental action.

26. Therefore, in the light of discussion made hereinbefore, finding disobedience of the mandate of law as well as the directions of the Hon'ble Supreme Court, the Director General of Police, Bihar/competent authority is directed to initiate departmental proceeding against the respondent no. 10, 11 and 12, the then SHO, SDPO, Superintendent of Police, Jamui, respectively. Till completion of departmental proceeding, no investigation work would be assigned to respondent no. 10.

27. Further the respondent no. 10, the then IO/ SHO,



violated the directions of the Hon'ble Supreme Court in the case of *Arnesh Kumar* (supra) and *Asfak Alam* (Supra) in not issuing the notice of appearance in terms of Section 41-A of the CrPC to the petitioner and making the arrest in violation of the said guidelines, hence, for the breach of law and non-compliance of direction of the Hon'ble Supreme Court and its willful disobedience, this Court *prima facie* comes to a finding that against the respondent no. 10, Chandan Kumar, a case of Civil Contempt under the provision of Section 2 of the Contempt of Courts Act, 1971 is made out and he is directed to furnish a show cause as to why contempt proceeding be not initiated against him for wilful disobedience of the directions of the orders of the Hon'ble Supreme Court in the case of *Arnesh Kumar*(supra) and *Asfak Alam*(supra). The show cause must be filed within eight weeks.

28. List this case on 19.06.2026.

**(Arun Kumar Jha, J)**

Anuradha/-

AFR/NAFR	AFR
CAV DATE	12.01.2026
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