

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.356 of 2022**

Arising Out of PS. Case No.-284 Year-2021 Thana- AMARPUR District- Banka

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1. Dr. Sitaram Sharma @ Dr. Sitaram Mistri Son of Late Kedar Mistri, Resident of Village - Mahamadpur, P.S. - Amarpur, District - Banka, Bihar- 813101.
  2. Rajiv Kumar @ Dr. Rajiv Kumar Son of Dr. Sitaram Sharma @ Dr. Sitaram Mistri, Resident of Village - Mahamadpur, P.S. - Amarpur, District - Banka, Bihar- 813101.
  3. Vindhvansi Sharma Wife of Dr. Sitaram Sharma @ Dr. Sitaram Mistri, Resident of Village - Mahamadpur, P.S. - Amarpur, District - Banka, Bihar- 813101.
  4. Sanjiv Kumar Sharma Son of Dr. Sitaram Sharma @ Dr. Sitaram Mistri Resident of Village - Mahamadpur, P.S. - Amarpur, District - Banka, Bihar- 813101.
  5. Rakesh Ranjan Son of Dr. Sitaram Sharma @ Dr. Sitaram Mistri Resident of Village - Mahamadpur, P.S. - Amarpur, District - Banka, Bihar- 813101.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Home Secretary, Bihar, Patna.
4. The Inspector General of Police, Bhagalpur Division at Banka. Bihar
5. The Deputy Inspector General of Police, Bhagalpur Division at Banka. Bihar
6. The District Magistrate, Banka. Bihar
7. The Superintendent of Police, Banka. Bihar
8. The Station House officer, Amarpur Police Station, Banka. Bihar
9. Arvind Kumar Rai, Sub- Inspector, Amarpur Police Station Bihar
10. Rakesh Kumar Singh, Sub- Inspector, Amarpur Police Station. Bihar
11. Shalini Sharma Wife of Rajiv Kumar @ Dr. Rajiv Kumar, Daughter of Shri Ajay sharma Resident of Village - Mahamadpur, P.S. - Amarpur, District - Banka, Bihar- 813101.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Amitabh Sohan, Advocate  
Mrs. Pallavi Singh, Advocate  
For the State : Mr. Suman Kumar Jha, AC to AAG-3



For the Resp. No.9 : Mr. Jagjit Roshan, Advocate  
Mr. Anjani Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR**  
**ORAL JUDGMENT**

**Date : 10-03-2026**

The present writ petition has been preferred by the petitioners seeking writ of mandamus directing the respondent authorities to initiate departmental proceeding against the police officials and Judicial Magistrate. The petitioners are also seeking initiation of contempt proceeding against the police officials.

2. The factual background of the case is that one police case bearing Amarpur P.S. Case No. 284 of 2021 was lodged on 13.06.2021 for offence punishable under Sections 341, 323, 504 read with Section 34 of the Indian Penal Code on the report of Smt. Shalini Sharma/ Respondent No.11, who is wife of petitioner No.2/Rajiv Kumar. It further transpires that vide order dated 22.06.2021 learned Chief Judicial Magistrate issued show cause to the concerned Investigating Officer why Section 498A of I.P.C. was not applied in the said F.I.R. despite sufficient allegation in the F.I.R. by the informant. Subsequently on 22.06.2021 petitioner No.2/Rajiv Kumar was arrested and thereafter, on 23.06.2021 Section 498A of IPC was added by learned Chief Judicial Magistrate on application of the police



and after investigation, charge-sheet has been submitted on 08.08.2021 only against petitioner No.2/Rajiv Kumar keeping investigation pending against rest accused persons who are family members of petitioner No.2/Rajiv Kumar. Subsequently on 02.11.2021 cognizance was taken against the petitioner No.2/Rajiv Kumar for offence punishable under Sections 341, 323, 504, 307 and 498A read with Section 34 of the Indian Penal Code. It further transpires that on 18.01.2022 the petitioner No.2/Rajiv Kumar was released on regular bail by a Co-ordinate Bench of this Court. It is also stated by learned counsel for the petitioners that one Criminal Miscellaneous No. 12667 of 2022 has been filed by the petitioners including Rajiv Kumar under Section 482 Cr.PC for quashing of the F.I.R.

3. I heard learned counsel for the petitioners and learned APP for the State.

4. Learned counsel for the petitioners submits that petitioner No.2/Rajiv Kumar was arrested on 22.06.2021 in a case in which the petitioners were alleged to have committed offence punishable under Sections 341, 323 and 504 of the Indian Penal Code and the maximum punishment provided for the alleged offence is below seven years and in view of direction of Hon'ble Supreme Court in **Arnesh Kumar Vs. State of**



**Bihar**, as reported in **(2014) 8 SCC 273**, the police is not authorized to arrest the accused without compliance of Section 41A Cr.PC. Hence, the arrest is illegal and hence, the concerned police officials and the concerned Judicial Magistrate have committed contempt of Court and hence, proceeding for contempt of Court of Hon'ble Supreme Court be initiated against the police officials as well as Judicial Magistrate. Learned counsel for the petitioners also submits that police officials and Judicial Magistrate are also liable for departmental proceeding in view of violation of direction of Hon'ble Supreme Court as given in **Arnesh Kumar Case** (supra).

5. However, learned APP for the State submits that even if it is presumed that arrest made by the police was illegal and remand made by the Judicial Magistrate was also not sustainable in the eye of law, neither the arrest by the police nor the remand by the Judicial Magistrate was challenged prior to filing of the regular bail application by the petitioner No.2/Rajiv Kumar before this Court and till date, the remand order passed by learned Judicial Magistrate is unchallenged. As such, the remand order is still absolute for want of any challenge against this order before any Higher Court and hence, arrest stands legal. Hence, it does not lie in the mouth of the petitioner to say



that arrest was illegal and contempt and departmental proceeding are required to be initiated against the police officials and the Judicial Magistrate. Had the petitioner challenged the arrest or remand before competent Court, the compliance or no compliance of the direction of Hon'ble Supreme Court as given in **Arnesh Kumar Case** (supra) could have been looked into by this Court. But now it is too late to look into the compliance of the direction of Hon'ble Supreme Court as given in **Arnesh Kumar Case** (supra). The petitioner has already acquiesced the legality of arrest and remand because the petitioner No.2/Rajiv Kumar moved regular bail application instead of challenging the arrest or remand before any Higher Court. Hence, the writ petition is shorn of any merit and liable to be dismissed. He also refers to and relies upon **Lallan Kumar Yadav vs. State of Bihar and Ors. [2026 (2) BLJ 414]** passed by this Court in **Criminal Writ Jurisdiction Case No. 1049 of 2021**.

6. I considered the submissions advanced by both the parties and perused the material on record.

7. There is no dispute that the arrest and remand of petitioner No.2/Rajiv Kumar is still unchallenged and subsequently he moved regular bail application before this



Court which was allowed and consequently, he has been released on bail. Other petitioners have never been arrested till date as per statement of learned counsel for the petitioners.

**8.** Hence, at this stage the grievance of the petitioners regarding compliance of **Arnesh Kumar Case** and initiating departmental or contempt proceeding against the concerned police officials or Judicial Magistrate is unwarranted. Under similar facts and circumstances, this Court in **Lallan Kumar Yadav Case (supra)** has held as follows:

**“11.** It also transpires that the petitioner never challenged the arrest and the remand before the High Court or any other Court. In stead, the petitioner filed an application for regular bail and he got bail and released subsequently. As such, for want of setting aside the remand order, passed by the competent Criminal Court, arrest becomes legal and it is absolute for want of any challenge to the higher Court and getting it set aside. Though it appears from the perusal of the case diary that the police officer before arresting the petitioner in Sonapur P.S. Case No. 574 of 2020, he has not complied with the direction of Hon’ble Supreme Court. But this non-compliance of direction of Hon’ble Supreme Court as given in **Arnesh Kumar Case (supra)** should have been raised just after arrest or just after remand, but he has not chosen to prefer any judicial proceeding against this illegal arrest or the illegal remand to the Writ Court. Instead, the petitioner preferred an application for regular bail which amounts to acquiescence of the petitioner that his detention was legal. Thereafter, it does not lie in the mouth of the petitioner to raise illegality of the arrest.

**12.** Hence, timing of challenging the arrest or remand subsequently is wrong. Had the petitioner come prior to filing of regular bail petition and just after remand by learned Judicial Magistrate, the Writ Court could have looked into the compliance of direction of Hon’ble Supreme Court by the police or even learned Judicial Magistrate at the time of remand. But now that time has



passed and this is not the stage to look into the compliance with the direction of Hon'ble Supreme Court in **Arnesh Kumar Case** (supra), either by the police or by the learned Judicial Magistrate. It is too late to look into such plea taken by the petitioner. Hence, the present petition is liable to be dismissed.

**13.** Accordingly, the present petition stands dismissed.

**14.** However, dismissal of the present writ petition does not mean that this Court is approving the conduct of the police officers as well as learned Judicial Magistrate. The perusal of the case diary shows that the concerned police officer is totally oblivious of the direction of Hon'ble Supreme Court as given in **Arnesh Kumar Case** (supra). Even, unfortunately, learned Judicial Magistrate appears to be ignorant about the guidelines issued by Hon'ble Supreme Court in **Arnesh Kumar Case** (supra) to be followed at the time of remand. Learned Judicial Magistrate is equally duty bound to look into the compliance by the police officer at the time of arrest in a case in which maximum punishment provided is seven years and if the Judicial Magistrate finds no compliance, then the Judicial Magistrate is duty bound to reject the application of the police for remand of the arrestee to judicial custody or otherwise. But this duty has not been done by the Judicial Magistrate. If the Judicial Magistrate could have perused the case diary before passing remand order, he could have rejected, because there is no whisper regarding compliance of the direction of Hon'ble Supreme Court as given in **Arnesh Kumar Case** (supra).

**15.** Here, it would be pertinent to refer to the directions issued by Hon'ble Supreme Court in **Arnesh Kumar Case** (supra) which reads as follows:

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

11.1. All the State Governments 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 above flowing from Section 41 CrPC;

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 filled 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 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;

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 the 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.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, 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."

**16.** The direction given by Hon'ble Apex Court in **Arnesh Kumar case** (supra) has been reiterated by Hon'ble Supreme Court in **Mohd. Asfak Alam v. State of Jharkhand** as reported in **(2023) 8 SCC 632**. The direction reads as follows:

"16. The impugned order of rejecting the bail and directing the appellants, to surrender and later seek bail, therefore, cannot stand, and is hereby set aside. Before parting, the Court would direct all the courts seized of proceedings to strictly follow the law laid down in **Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273** and reiterate the directions contained thereunder, as well as other directions.



16.1.(I) Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273

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

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

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

11.3. The police officer shall forward the checklist duly filled 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 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;

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 the 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.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-AIPC or Section 4 of the Dowry Prohibition Act, the case in



hand, 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.”

16.2.(II) The High Court shall frame the above directions in the form of notifications and guidelines to be followed by the Sessions Courts and all other and criminal courts dealing with various offences.

16.3.(III) Likewise, the Director General of Police in all States shall ensure that strict instructions in terms of the above directions are issued. Both the High Courts and the DGPs of all States shall ensure that such guidelines and Directives/Departmental Circulars are issued for guidance of all lower courts and police authorities in each State within eight weeks from today.

16.4.(IV) Affidavits of compliance shall be filed before this Court within ten weeks by all the States and High Courts, through their Registrars."

17. Learned Registrar General is directed to circulate a copy of this order amongst the Judicial Officers. He is also directed to send a copy of this order to Director General of Police, Bihar to circulate it amongst the police officials, because despite several directions of Hon'ble Supreme Court and this Court as well as guidelines of the Government of Bihar, the Police Officers are not complying with the direction as issued by Hon'ble Supreme Court in **Arnesh Kumar Case** (supra) at the time of arrest in a case maximum imprisonment provided up to seven years.”

9. Hence, I find no merit in the present writ petition.

Accordingly, it is dismissed.

**(Jitendra Kumar, J.)**

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