

High Court of Telengana at Hyderabad

Before: Justice Lalitha Kanneganti

SYED INAYATH ULLAH – Petitioner,

versus

THE STATE OF TELANGANA – Respondent.

Criminal Petition No.824 of 2022

(i) Criminal Procedure Code, 1973, Section 41-A , 438 - Notice served under Section 41-A - After issuance of notice under Section 41-A Cr.P.C., if the police feels that the accused has to be arrested, without obtaining the permission from the Magistrate concerned, they cannot arrest the accused.

(ii) Criminal Procedure Code, 1973, Section 41-A - If the accused feels that the police failed to follow the procedure under Section 41-A Cr.P.C. or the guidelines of the Apex Court in *Arnesh Kumar v. State Of Bihar*, 2014 SCeJ 001, 2014 PLRonline 0200, they could as well come before this Court by filing contempt petition against the concerned police officer with relevant material to substantiate their allegations.

ORDER

Lalitha Kanneganti, J. – (07.02.2022) – This petition is filed under Section 438 of the Code of Criminal Procedure, 1973, seeking bail to the petitioner/A.1 in the event of his arrest in connection with Crime No.109 of 2021 of Central Crime Station, WCO Team- V, Hyderabad, registered for the offences punishable under Sections 406, 420 read with Section 34 IPC.

2.The case of prosecution is that the de facto complainant lodged a complaint stating that in September, 2020, he came into contact with A1 through his friend Ibrahim and that A1 has introduced himself as Doctor in Virinchi Hospital and running a clinic at Narayanaguda. In January, 2021, A1 has requested the de-facto complainant to provide a sum of Rs. 45,00,000/- and assured to repay the same with good interest on or before 01.03.2021, and on believing his words, he paid an amount of Rs.25,00,000/- on 16.01.2021 and Rs.20,00,000/- on 21.01.2021 by procuring the said amounts from his friends. But, on completion of the said period, A1 and his father/A2 dodged the matter and on several requests, A1 has issued a cheque for a sum of Rs.10,00,000/-, but the same was bounced on its presentation before the Bank, thereby cheated him.

3.Learned Counsel for the petitioner Mr.Rajender Khanna, submits that earlier in CrI.P.No.8721 of 2021 filed by petitioner for pre-arrest bail, this Court has directed the police concerned to follow the procedure under Section 41-A Cr.P.C., and the guidelines formulated by the Hon'ble Supreme Court in *Arnesh Kumar v. State of Bihar*, *Arnesh Kumar v. State Of Bihar*, 2014 SCeJ 001, 2014 PLRonline 0200, (2014) 8 SCC 273. Learned counsel

submits that after disposal of the said petition, petitioner was issued notice under Section 41-A Cr.P.C., and he has appeared before the police on two occasions, and whenever he appeared before them, there was no receipt of acknowledgment from the police and he was constrained to send all the relevant material to the Director General of Police as well as Commissioner of Police. He further submits that in all the cases where notice under Section 41-A Cr.P.C., was issued, the police are not issuing any acknowledgment and some times, they are coming up saying that the accused is not cooperating with the investigation and taking steps to arrest the accused, and hence, the petitioner's case may be considered for grant of pre-arrest bail.

4. On the other hand, learned Assistant Public Prosecutor submits the police have issued notice under Section 41-A Cr.P.C., and they are already following the guidelines formulated by the Apex Court in *Arnesh Kumar's case* (supra). He further submits that the police are going to file a report before this Court in another case about the procedure to be adopted.

5. This Court has already directed the Director General of Police to frame guidelines with regard to issuance of acknowledgment in the cases where accused appears before the police under Section 41-A Cr.P.C., and the same cannot be at the whims and fancies of the police. If the accused feels that the police failed to follow the procedure under Section 41-A Cr.P.C. or the guidelines of the Apex Court in *Arnesh Kumar's case* (supra), they could as well come before this Court by filing contempt petition against the concerned police officer with relevant material to substantiate their allegations, but on this basis, they cannot seek anticipatory bail. It is appropriate to mention that after issuance of notice under Section 41-A Cr.P.C., if the police feels that the accused has to be arrested, without obtaining the permission from the Magistrate concerned, they cannot arrest the accused.

6. Accordingly, the Criminal Petition is disposed of, directing the police concerned to follow the procedure as contemplated under Section 41-A Cr.P.C., and the guidelines formulated by the Apex Court in *Arnesh Kumar's case* (supra).

7. Consequently, miscellaneous applications pending, if any, shall stand closed.

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