



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/MISC. CIVIL APPLICATION NO. 1009 of 2023**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI : Sd/-**  
**and**  
**HONOURABLE MR. JUSTICE DIVYESH A. JOSHI : Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

**KRINABEN W/O TUSHAR SURYAKANT TRIVEDI**  
**Versus**  
**N P GARASIYA, POLICE SUB INSPECTOR,**  
**SPECIAL INVESTIGATION TEAM**

**Appearance:**

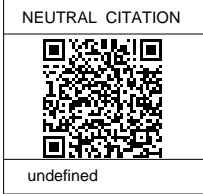
**MR BHAVIK J PANDYA(5002) for the Applicant(s) No. 1,2**  
**MR MANISH J PATEL(2131) for the Applicant(s) No. 1,2**  
**MR TRUPESH KATHIRIYA AGP for Respondent**

**CORAM:HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI**  
**and**  
**HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**

**Date : 08/09/2023**

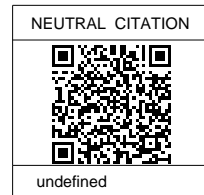
**ORAL JUDGMENT**

**(PER : HONOURABLE MR. JUSTICE DIVYESH A. JOSHI)**



1. By way of filing present application under Section 12 of the Contempt of Court's Act, 1971 (hereinafter referred to as "the Act" for short), the applicants have prayed for following reliefs,  
"(A) That, to direct the respondent to purge the contempt of court on order / judgment rendered by the Hon'ble Apex court in matter of Arnesh Kumar v/s. State of Bihar dated 02-07-2014 (Annexure A/2) and to punish him under Contempt of Court's Act;  
(B) Pending hearing and final disposal of this petition, this Hon'ble Court may be pleased to direct the respondent to remain personally present to explain his contumacious conduct;  
(C) xxx xxx xxx."  
2. The brief facts leading to filing of the present application are as under,

It is the case of the applicants that on 18.05.2023, the respondent along with other police officials had come to the residence of the applicant and took them into custody at around 12:48 hours and after reaching the Police Station, an FIR being C.R. No.11191025230498/2023 has been registered with Kagadapith Police Station for the offences under Sections 406, 420, 506(2), 34 and 120(B) of the Indian Penal Code at around 13:30 hours and on the next day, they were produced before the learned Metropolitan Magistrate, Court No.15, Ahmedabad along with check-list for remand, which was rejected, but the grounds mentioned in the check-list do not justify the arrest and

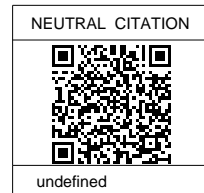


production of the applicants. It is the case of the applicants that before the arrest of the applicants, no notice as required under Section 41A of the Criminal Procedure Code (hereinafter referred to as "CrPC" for short) was issued to the applicants and thus, there is complete violation and defiance of the guidelines issued by the Hon'ble Apex Court in case of **Arnesh Kumar Vs. State of Bihar & Anr.**, reported in (2014) 8 SCC 273 and the conduct of the respondent is contemptuous and requires to be punished under the provision of the Contempt of Court's Act.

3. Heard learned advocate, Mr. Manish J. Patel for the applicants and learned AGP Mr. Karathiya appearing for respondent.
4. Learned advocate, Mr. Manish Patel appearing for the applicants has submitted that the respondent is the Police Officer working in Special Investigation Team, Ahmedabad and thereby he is a Government employee. Learned advocate submitted that on 18.05.2023, the respondent along with other Police officials had come to the residence of the applicants and took them into the custody around about 12:48 hours and then, took them to Police Station and after reaching there, an FIR being C.R. No.11191025230498/2023 has been registered with Kagadapith Police Station for the offences under Sections 406, 420, 506(2), 34 and 120(B) of the Indian Penal Code at around about 13:30 hours. Learned advocate submitted that it is

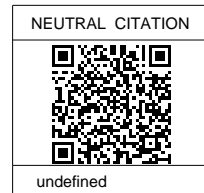


an admitted position of fact that at the time of arrest of the applicants, the aforesaid FIR was not registered against them and, therefore, action on the part of the respondent is in violation of the directions issued by the Hon'ble Apex Court in case of **Arnesh Kumar (supra)**, copy of which is produced on record along with memo of petition. Learned advocate has referred to the said decision and submitted that if this Court would make cursorily glance upon the copy of FIR, it is clearly found out that the offence has occurred during the period between 07.02.2018 to 18.05.2023 and the complaint is registered on 18.05.2023 at around about 01:30 p.m. and in connection with the said FIR, the applicants were produced before the learned Metropolitan Magistrate, Court No.15, Ahmedabad on the very next day i.e. on 19.05.2023 at 02:50 p.m. Learned advocate has submitted that the incident of police atrocities as well as misused of the power exercised by the police machinery have been increased across the country and the said fact has come to the notice of the Hon'ble Apex Court while dealing with the case of **Arnesh Kumar (supra)** and the Hon'ble Apex Court has given specific guidelines to be followed by the concerned police officer at the time of making arrest but in the facts of the present case, the concerned Police Officer has in blatant disregard to the said guidelines issued in the aforesaid judgments and acted/ behaved in the manner as if



such guidelines are not at all in existence and, therefore, the respondent has committed criminal contempt of the court by not complying and following the directions and guidelines issued by the Hon'ble Apex Court in the aforesaid decision.

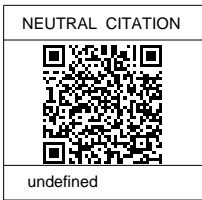
5. Learned advocate has once again referred to the observation made by the Hon'ble Apex Court in case of **Arnesh Kumar (supra)**, more particularly, operative part of the said decision and submitted that it is the duty on the head of the incumbent Police Officer to adhere the directions issued by the Hon'ble Apex Court scrupulous. Learned advocate has submitted that the check-list was produced by the respondent before the concerned learned Magistrate at the time of production of the accused. Learned advocate submitted that that if this Hon'ble Court would cursorily make a glance upon the grounds mentioned in the check-list, it would make the position clear that the grounds mentioned in the check-list are not in consonance with the guidelines issued by the Hon'ble Apex Court in case of **Arnesh Kumar (supra)**.
6. Learned advocate has submitted that the criminal cases wherein the maximum punishment prescribed is upto seven years, in those cases, generally the accused are not required to be arrested straightway and if at all the concerned Investigating Officer is of the opinion that serious charges have been levelled against the accused person, in that



event, they have to produce the accused before the concerned Magistrate along with check-list. Here in this case on hand, the respondent had produced the accused along with check-list, the grounds narrated in the check-list were not in consonance with the guidelines issued by the Hon'ble Apex Court. Learned advocate referred the check-list and submitted that three grounds have been raised by the respondent, which are as under,

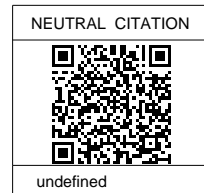
- (1) the accused have committed offence and sufficient evidence is found out, therefore the arrest of the accused is necessary;
- (2) the accused is permanent resident of Mehsana and without obtaining sufficient surety, they cannot be released and there are all possibility of fleeing away at the time of trial; and
- (3) with an intention to prevent the accused from committing another offence again.

7. After referring aforesaid three grounds mentioned in the check-list, learned advocate submitted that these are the grounds mentioned in the check-list prepared by the respondent no.2 under Section 41A of the CrPC but the said grounds mentioned in the check-list cannot be said to be valid nor in conformity with the guidelines issued by the Hon'ble Apex Court and, therefore, the respondent has willfully not obeyed the directions of the Hon'ble Apex Court and committed breach of the guidelines issued by the Hon'ble Apex Court and the respondent has exercised excessive power



against the dictum of the Hon'ble Apex Court and the sequence of events narrated in the petition as well as the documents produced by the applicants clearly show that the applicants have successfully proved their case beyond reasonable doubt, therefore, appropriate proceedings under the Contempt Act are required to be initiated against him by framing necessary charges under Section 12 of the Contempt of Court's Act. It is, therefore, urged that this application be allowed as prayed for.

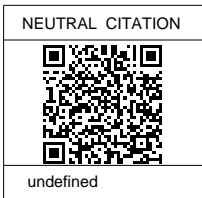
8. Learned AGP Mr. Karathiya appearing on behalf of the respondent has opposed this application filed by the applicants. Learned AGP has referred to the affidavit-in-reply filed by the respondent herein. Learned AGP has submitted that the office of the respondent has received one application in the form of complaint against the applicants and, therefore, the applicants were called in the Police Station and after having subjective satisfaction pursuant to the investigation carried out on the strength of contents of the written application in the form of complaint, an FIR being C.R. No.11191025230498/2023 has been registered with Kagadapith Police Station for the offences under Sections 406, 420, 506(2), 34 and 120(B) of the Indian Penal Code on 18.05.2023 at 01:30 p.m. and pursuant to registration of the said FIR, the applicants came to be arrested on the very same day i.e. on 18.05.2023 at 04:30 p.m. and they were



presented before the Learned Metropolitan Magistrate, Court No.15, Ahmedabad on the next day i.e. on 19.05.2023 at 02:50 p.m. along with check-list and in the check-list, specific grounds are stated with regard to the arrest and production of the accused and while doing so, the respondent has fully complied with the provision of Section 41A of the CrPC and also strictly adhered with the directions and guidelines issued by the Hon'ble Apex Court. Learned AGP has further submitted that it is the fact on record that the applicants were produced before the concerned Magistrate and remand was sought but remand application has been rejected and, therefore, they were taken into the judicial custody. Learned AGP has further submitted that it is clearly mentioned in the operative part of the decision of the Hon'ble Apex Court in case of **Arnesh Kumar (supra)** that if the Police Officer is satisfied that the arrest is necessary to prevent the accused from committing any further offence then, the concerned officer may arrest the accused and in the present case also, after having subjective satisfaction, the accused persons are arrested and produced before the learned Magistrate along with check-list.

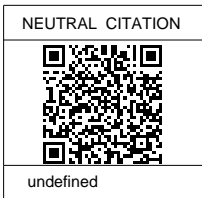
9. Learned AGP has referred Section 41A of the CrPC and submitted that it is clearly stated in the provision that if the police officer is satisfied that such arrest is necessary, in that event, the police officer may arrest any person without a





warrant, therefore, the documents produced on record clearly go to show that the conditions mentioned in Section 41A of the CrPC have been fully complied with by the respondent and the respondent has acted bonafidely as Police Officer and arrested the applicants, who have committed alleged crime in his jurisdiction. Learned AGP has submitted that the respondent has acted as Police Officer and considering the gravity and magnitude of the offence, he has arrested the accused persons and thus, the respondent has strictly adhered to the terms and conditions mentioned in the guidelines in case of **Arnesh Kumar (supra)** and, therefore, the contempt application preferred by the applicants is required to be dismissed as it is misconceived. It is, therefore, urged that this application be rejected.

10. We have heard learned advocates for the parties. We have also gone through the documents produced on record by both the parties.
11. It is an undisputed position fact that the applicants are the accused persons in connection with an FIR being C.R. No.11191025230498/2023 registered with Kagadapith Police Station for the offences under Sections 406, 420, 506(2), 34 and 120(B) of the Indian Penal Code.
12. From the facts of the case as narrated hereinabove, it is emerging out that the issue involved in the present matter is in narrow compass and to decide the issue involved in the



matter, we would like to advert to the provision of law at the first instance. At this stage, we would like to refer to the provision of Section 41A of the CrPC, which reads as under,

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

- (1) 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.*
- (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*



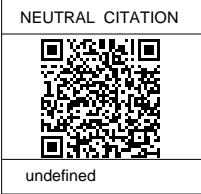
*mentioned in the notice."*

13. We would also like to refer to some of the paragraphs mentioning about the guidelines issued by the Hon'ble Apex Court in case of **Arnesh Kumar (supra)**, which reads as under,

*"7.1 From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.*



- 7.2 *The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest.*
- 7.3 *In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.PC.*
9. *Another provision i.e. Section 41A Cr.PC aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be vitalised. Section 41A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008(Act 5 of 2009), which is relevant in the context reads as follows:*



- "41A. Notice of appearance before police officer.-(1) 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.*
- (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."*

*Aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1), Cr.PC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr.PC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.*

- 10. We are of the opinion that if the provisions of Section 41, Cr.PC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.PC*



*for effecting arrest be discouraged and discontinued.*

*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:*

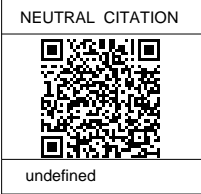
*11.1 All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;*

*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;*

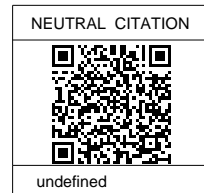
*11.6 Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;*

*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."*

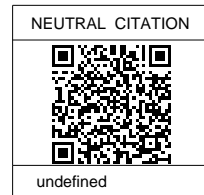
14. It is a position not in controversy that an FIR being C.R. No.11191025230498/2023 has been registered with Kagadapith Police Station for the offences under Sections 406, 420, 506(2), 34 and 120(B) of the Indian Penal Code, wherein the applicants were shown as accused and, hence, consequently they were arrested by the concerned Police Officer on 18.05.2023 and on the very next





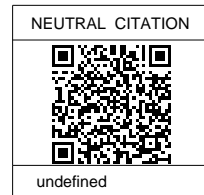
day i.e. on 19.05.2023, they were produced before the learned Metropolitan Magistrate, Court No.15, Ahmedabad along with the check-list. Even remand of the applicants was also sought for but the said application was rejected and the accused were sent to judicial custody and since then, they were in custody. We have also gone through the contents of the FIR and found that allegations leveled against the applicants are serious and grievous in nature. It is true that for the offences committed by the applicants, for which the aforesaid FIR has been lodged for the said offences, if at the end of trial, the charges levelled against the accused are to be proved, in that event, maximum punishment could be imposed upto seven years as per the penal provision of the statute. Therefore, in view of the provision of Section 41A of the CrPC and as per the guidelines and directions issued by the Hon'ble Apex Court in the aforesaid decision, at the time of arrest and production of the accused, the concerned Investigating Officer has to submit check-list before the concerned Magistrate. It is admitted position of fact that the accused was produced before the concerned Magistrate and at the time of production, check-list was also produced by the respondent. The objection of the applicants is about the non-suitable grounds mentioned in the check-list with regard to the arrest of the accused.

15. It is clearly and expressly stated in Section 41



of the CrPC that any police officer may without an order from the Magistrate and without a warrant, arrest any person subject to fulfillment of certain conditions that if the concerned police officer is satisfied that the arrest is inevitable necessary then, the concerned police officer has to justify the cause mentioning the reasons of the arrest by narrating the grounds. Here in this case on hand, the concerned police officer has narrated the grounds expressly in a clear terms in the check-list at the time of production of the accused and copy of the check-list was given to the concerned court at the time of production of the documents and presentation of the accused, therefore, conscious of the Investigating Officer is satisfied at the time of arrest. The ground mentioned in Section 41A and Section 41(1)(ii)(a) of the CrPC provides "to prevent such person from committing any further offence".

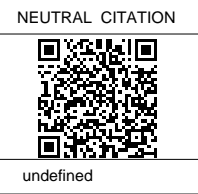
16. If we would like to refer to the content of the grounds mentioned in the check-list, it clearly shows that it is specifically mentioned by the Investigating Officer that with a sole intention to prevent them from committing another offence of the similar nature. Therefore, the reasons mentioned in the check-list by the IO clearly show that he has fully and substantially complied with the condition mentioned as per the statutory provision of the CrPC as well as adhered with the directions and guidelines issued by the Hon'ble



Apex Court in case of **Arnesh Kumar (supra)** in *stricto sensu* manner. Therefore, we are of the opinion that the action on the part of the respondent is not contemptuous in nature and on the contrary, we are of the opinion that authority has adhered to the norms and the statutory provision of law.

17. At this stage, we would like to put reliance upon the decision of the Hon'ble Apex Court in case of **Ram Kishan Vs. Tarun Baja & Ors.**, reported in (2014) 16 SCC 204, wherein the Hon'ble Apex Court has observed in Paragraph No.11 as under,

*"11. The Contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizens that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi- criminal in*



*nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities."*

18. Thus keeping in view of the aforesaid decisions as well as in view of the facts of the case and discussion made hereinabove, we are of the opinion that this is not a fit case to exercise contempt jurisdiction since no clear case is made out by applicant. Accordingly, we deem it proper not to entertain application, hence, the same is hereby dismissed. Notice is discharged.

Sd/-  
(ASHUTOSH SHASTRI, J.)

Sd/-  
(DIVYESH A. JOSHI, J.)

Gautam