

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1703 of 2019

Arising Out of PS. Case No.-193 Year-2017 Thana- NARDIGANJ District- Nawada

Kundan Kumar, Son of Sri Prasadi Chouhan, Village- Samri, Tola
Khedu Bigha, P.S- Nardiganj, District- Nawada. Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Nawada
2. Secretary, Home Deptt., Govt. of Bihar, Patna.
3. Director General of Police, Bihar, Patna.
4. Inspector General of Police Patna Zone, Patna. Patna
5. Deputy Inspector General of Police, Magadh Zone, Gaya.
6. Superintendent of Police, Nawada.
7. Sub-divisional Police Officer, Nawada.
8. Station House Officer, Nardiganj.
9. Sanju Devi, Wife of Bhuneshwar Chouhan, Village- Khedu Bigha,
P.S.-Nardiganj, District- Nawada.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Indradeo Prasad, Advocate
Mr. Nagendra Kumar, Advocate
For the Respondent/s : Mr. Prabhat Kumar Verma, AAG-3
Mr. Saroj Kumar, AC to AAG-3

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-01-2020

The issue, which arises for consideration before us, is as to whether, at this point in time, the petitioner's detention in connection with Nardiganj P.S. Case No. 193 of 2017 dated 27.11.2017 for the offences punishable under Sections 364, 506/34 of the Indian Penal Code is illegal or not.

It is a matter of record that F.I.R. was registered on



27.11.2017.

According to the writ petitioner, who is accused in the said case, he is a victim of local politics. He is a man of means having roots in the society and was never called by the police in connection with the said F.I.R. It is only when he filed nomination for election to the local Co-operative Society, the police, under the influence of local politicians, arrested him on 17.11.2019.

Well, in this petition we need not go into such controversy, for what is required to be adjudicated is as to whether the petitioner's detention post 17.11.2019 is illegal or not.

It is a matter of record that after his arrest on 17.11.2019, the petitioner was produced before the concerned Magistrate.

In order to satisfy ourselves with regard to the petitioner's detention, we summoned the entire judicial record, which we have perused.

On 17.11.2019, when the accused/writ petitioner was produced before the Magistrate, the following order was passed:

“17.11.19 थाना प्रभारी नारदीगंज द्वारा अग्रसारण प्रतिवेदन गिरफ्तारी ज्ञापांक एवं अधतन काण्ड दैनिकी की छाया प्रति के साथ अभियुक्त कुन्दन कुमार उम्र 40 वर्ष पे.



प्रसादी चौहान सा० सम्हड़ी थाना नारदीगंज, जिला नवादा को आरोप की धारा 364, 506, 134 भा.द.वी. के अंतर्गत गिरफ्तार कर उचित अभिरक्षादल के द्वारा न्यायालय में प्रस्तुत कराया गया है। अभियुक्त को पूछने पर अभिरक्षादल के द्वारा रास्ते में किसी प्रकार का दुर्व्यहार का शिकायत नहीं करते हैं तथा पुछने पर अपना अधिवक्ता स्वयं रखने की बात स्वीकारते हैं। अतः अभियुक्त को दिनांक 29.11.19 तक के लिए अभिरक्षा अधिपत्र के साथ न्यायिक हिरासत में मंडल कारा नवादा रिमांड किया जाता है।

(लेखापित)

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Even from bare reading thereof, it cannot be inferred that the concerned Magistrate had recorded his satisfaction, as is mandated in law.

The Apex Court in the case of **Arnesh Kumar Vs. The State of Bihar & Ors, reported in (2014) 8 SCC 273**, only with the endeavour of safeguarding the interest of the accused and ensuring that persons are not illegally detained, as is mandated under the constitution and the law of the land, issued the following directions:

“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 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 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.”

(Emphasis added)

What shocks us is the manner in which the Judicial Officers are passing routine orders, which is evident from the subsequent orders dated 29.11.2019, 11.12.2019, 23.12.2019 and 04.01.2020. In none of these orders, there is a whisper that the accused be detained or sent to jail, much less record any satisfaction. These orders read as under:

“29.11.19 पी0ओ0 ट्रेनिंग में गए है। अभियुक्त कुन्दन कुमार को कारा से प्रस्तुत किया गया अंतिम प्रपत्र अप्राप्त है।

दि. 11.12.19 को उपस्थापन एवं अंतिम प्रपत्र की प्रतिक्षा में।

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11.12.19 पी0ओ0 अवकाश पर है। कारा वन्दी अभियुक्त कुन्दन कुमार को कारा से प्रस्तुत किया गया अंतिम प्रपत्र



अप्राप्त है।

दि. 23.12.19 को उपस्थापन एवं अंतिम प्रपत्र की
प्रतिक्षा में।

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23.12.19 पी0ओ0 का स्थानान्तरण हो गया है। कारा वन्दी
अभियुक्त कुन्दन कुमार को कारा से प्रस्तुत किया
गया। अंतिम प्रपत्र अप्राप्त है।

दि. 4.1.20 को उपस्थापन एवं अंतिम प्रपत्र की
प्रतिक्षा में।

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4.1.20 पी0ओ0 का स्थानान्तरण हो गया है। कारा वन्दी
अभियुक्त कुन्दन कुमार को कारा से प्रस्तुत किया
गया। अंतिम प्रपत्र अप्राप्त है।

दि. 17.1.20 को उपस्थापन एवं अंतिम प्रपत्र की
प्रतिक्षा में।

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Such orders are being passed in routine manner,
without any application of mind and assigning any reason.

The Apex Court in **Arnesh Kumar** (supra) observed
that recording of satisfaction was not an empty formality.



Judicial Officers are not mere post officers, they are mandatorily required to examine the record, whereafter record their satisfaction with regard to the need and requirement of the accused to be detained and kept in custody, which regrettably, as is evident was never done in the instant case. In a very casual and a perfunctory manner, the accused-writ petitioner's case for remand was dealt with by the Judicial Officer (s) dealing with the file right from 17.11.2019, till 04.01.2020.

Having heard the learned counsel for the parties and also perused the record, we have no doubt that at this point of time, the petitioner's detention is absolutely illegal and as such the writ petition needs to be allowed.

As such we direct release of the petitioner Kundan Kumar forthwith, who is detained in custody, in connection with Nardiganj P.S. Case No. 193 of 2017 leaving it open to the authorities to take appropriate action, with regard to his detention, in accordance with law.

However, we clarify that our observations are confined only with respect to the instant F.I.R. i.e. Nardiganj P.S. Case No. 193 of 2017.

For the aforesaid reasons, the writ petition is allowed and disposed of.



The Registrar General of this Court is directed to forthwith communicate this order to the Director, Judicial Academy, Bihar, Patna for imparting training to the Judicial Officers as to how the officers must deal with the remand applications.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

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AFR/NAFR	AFR
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