

WPCRL No. 1527 of 2014

**Hon'ble U.C.Dhyani, J.**

Mr. R.P. Nautiyal, Senior Advocate assisted by Mr. Jayvardhan Kandpal, Advocate present for the petitioners.

Mr. V.S. Pal, AGA, assisted by Ms. Geeta Parihar, Brief Holder, present for the State.

Mr. R.S. Sammal, Advocate alongwith Mr. Bhuwanesh Joshi, Advocate, present for the respondent no.3.

An FIR was lodged against the petitioners for the offences punishable under Sections 420, 467, 468, 471, 504, 506 and 120-B IPC.

When the criminal writ petition was taken up for admission, on the last occasion it was provided that the petitioner shall contact the Investigating Officer of the case on 26.12.2014, and on such subsequent dates, as may be instructed by him (I.O).

It was provided, as an interim measure, that no coercive measures shall be taken against the petitioner during the course of interrogation and investigation, so long as they cooperate with the Investigating Agency.

Both the sides agree that the writ petition be disposed of summarily in view of the judgment rendered by Hon'ble Apex Court in **Arnesh Kumar vs. State of Bihar and another, reported in (2014) 8 Supreme Court cases 273**, irrespective of penal Sections which have been fastened against the petitioner wherein it was held as under:-

*"7.1 From a plain reading of the aforesaid provision, it is evident that a person accused of an 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 his satisfaction that such person had committed the offence punishable as aforesaid. A 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. The 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 purposes 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 more purposes envisaged by Sub-clauses (a) to (e) of clause (1) of section 41 of Cr.P.C.*

Needless to say that the Investigating Officer of the case shall abide by the aforesaid directions of Hon'ble Apex Court before affecting the arrest of the petitioner.

Criminal writ petition is summarily disposed of with the directions as above.

siddharth

**(U.C.Dhyani, J.)**

31.03.2015