

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Writ Petition No. 474 of 2016

Kashim Ali Petitioner
versus
State of Uttarakhand & others Respondents

Mr. Devang Dobhal, Advocate for the petitioner.
Mr. Hari Om Bhakuni, A.G.A. for the respondent State.

U.C. Dhyani, J.(Oral)

By means of present criminal writ petition, the petitioner seeks a writ, order or direction in the nature of certiorari quashing the impugned FIR dated 12.02.2016, registered as crime no. 34 of 2016, under Sections 420, 465, 506 IPC, relating to Police Station, Sahaspur, District Dehradun.

2) Heard learned counsel for the petitioner, learned counsel for the respondent State and perused the documents brought on record.

3) When the writ petition was taken up for admission, the co-ordinate Bench of this Court vide order dated 23.04.2016 granted interim protection from arrest to the accused-petitioner. The learned co-ordinate Bench observed as follows:

“As an interim measure, it is provided that though the investigation may go on but until further orders of this Court or till filing of the charge sheet, whichever is earlier, petitioner shall not be arrested nor any coercive measures shall be taken against him in pursuance of case crime no. 34 of 2016, under Sections 420, 465 & 506 IPC, at Police Station Sahaspur, District Dehradun, provided the petitioner cooperates in the investigation.”

4) 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, the petitioner should be arrested only when the Investigating Officer has reason to believe, on the basis of information and material collected, that he has committed an offence. Before making arrest, the Investigating Officer is required to satisfy himself 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. It will not be based upon the *ipse dixit* of the Police Officer. In other words, the petitioner shall be arrested only when the conditions stipulated in Sub-Clauses (a) to (e) of Clause (1) of Section 41 of Cr.P.C. are satisfied.

5) 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.

6) Petitioner is directed to contact the Investigating Officer of the case on 07.12.2016, and on such subsequent dates as may be instructed by him (I.O.) for interrogation and investigation.

7) When the investigation of the case will be conducted, it will either culminate into filing of the charge-sheet or submission of final report. This Court has no occasion to interfere in the investigation in between.

8) Therefore, it will be of no use keeping the present criminal writ petition pending. Criminal Writ Petition is, accordingly, disposed of at the admission stage itself, with the consent of learned counsel for the parties, who are present.

(U.C. Dhyani, J.)

Dt. November 30, 2016.

Negi