

**IN THE HIGH COURT OF UTTARAKHAND AT**  
**NAINITAL**

**Criminal Writ Petition No. 127 of 2017**

Ajay Kumar .....Petitioner

versus

State of Uttarakhand and others ..... Respondents

Mr. Neeraj Garg, Advocate, present for the writ petitioner.  
Mr. M. A. Khan, learned Deputy Advocate General, assisted by Mr. S.K.Chaudhary and Mr. Milind Raj, Brief Holder, present for the State/respondents no.1, 2 & 3.

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

By means of present writ petition, the petitioner prays for the following relief, among others:

*“(a) Issue a writ, order or direction in the nature of certiorari quashing the impugned FIR No. 2 of 2017, dated 10.01.2017, under Sections 420 and 120B of IPC, registered as Case Crime No. 18 of 2017, at Police Station Sahaspur, District Dehradun (Annexure No.1).*

*(b) Issue a writ, order or direction in the nature of mandamus commanding the respondents no.1,2 & 3 not to arrest the present petitioner pursuant to impugned FIR No. 02 of 2017, dated 10.01.2017, under Sections 420 and 120B of IPC, registered as Case Crime No. 18 of 2017, at Police Station Sahaspur, District Dehradun.”*

2. Heard learned counsel for the petitioner, learned counsel for the State, perused the documents brought on record and considered the grounds taken up in the writ petition.
3. The allegation against the petitioner is that the measurement of the land which was sold in favour of respondent no.4 was

less. It is the submission of learned counsel for the petitioner that the dispute is civil in nature and, therefore, petitioner is entitled for protection 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.**

4. 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 07.02.2017, 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.

9. In the given facts and circumstances of the present writ petition, this Court does not feel it necessary to issue notice to the private respondent. Still, liberty is granted to him to move for recall of this Order, if he feels aggrieved with the same.
10. Urgency application being IA No. 545 of 2016 also stands disposed of.

**(U.C. Dhyani, J.)**  
**Vacation Judge**  
31.01.2017

Kaushal

