

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**  
**Criminal Writ Petition No. 138 of 2018**

Vikas Chaudhary @ Deepu Chaudhary & Another  
.....Petitioners

Versus

State of Uttarakhand & others  
.....Respondents

**Hon'ble Sharad Kumar Sharma, J.**

1. Mr. Sanjay Bhatt, Advocate for the petitioners.
2. Mr. J.S. Virk, A.G.A. with Mrs. Mamta Joshi, Brief Holder for the State/respondent Nos. 1 & 2.
3. The First Information Report has been lodged by respondent No. 3 against the petitioners, which has been registered as F.I.R. No. 328 of 2017 dated 15.11.2017, under Sections 323, 354, 504 & 506 of IPC, at P.S.-Ramnagar, District-Nainital. Apprehending their arrest, the petitioners have approached this Court for relief.
4. Considering the facts and circumstances of the case as well as the nature of offence and since the maximum punishment in this offence is seven years or less, a limited interference is called for in the matter.
5. The writ petition stands disposed with the direction to the police authorities to proceed with the investigation in accordance with law, subject to the full cooperation of the petitioners in the investigation, but as far as the arrest of the petitioners is concerned, the same may be done only under the parameters as framed under Section 41 and Section 41A of Cr.P.C. as well as following the guidelines given by the Hon'ble

Apex Court in its relevant paragraph nos.9, 10 & 11 in the case of **Arnesh Kumar Vs. State of Bihar & another**, reported in **(2014) 8 SCC 273**, which reads as under:-

9. Another provision i.e. Section 41-A Cr.PC aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be vitalised. Section 41-A 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.”

The 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.*

6. It is further made clear that this order shall remain operative till filing of the chargesheet or final report, in case of that event.

7. Urgency Application (IA No. 624 of 2018) stands disposed of.

**(Sharad Kumar Sharma, J.)**  
**Vacation Judge**

Dated 31.01.2018

Pooja