

THE HIGH COURT AT CALCUTTA

APPELLATE SIDE

NOTIFICATION

NO. 8265- RG

Date:23.08.2023

In pursuance of the direction of the Hon'ble Supreme Court of India, contained in the Judgment dated 31.07.2023 passed in Criminal Appeal No. 2207 of 2023 arising out of SLP (Crl.) No. 3433 of 2023 [Md. Asfak Alam -vs- The State of Jharkhand & Anr] and with the approval of the Hon'ble the Chief Justice, the following guidelines are framed by the High Court at Calcutta to be followed by the Sessions courts and all other and Criminal courts within the territory of West Bengal and Andaman & Nicobar Islands, dealing with various offences :

" The endeavour of the Hon'ble Supreme Court in the above-mentioned judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorize detention casually and mechanically. In order to ensure the above, the Hon'ble Supreme Court has been pleased to give the following directions:

1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 Cr.P.C.
2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1) (b)(ii).
3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention.
4. The Magistrate while authorizing 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 authorize detention.
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.
6. Notice of appearance in terms of Section 41-A Cr.P.C. 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.

7. Failure to comply with 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.
8. Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

The Hon'ble Supreme Court hasten to add that the directions aforesaid shall not only apply to the case under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a terms which may be less than seven years or which may extend to seven years, whether with or without fine”.

The above directions of the Hon'ble Supreme Court shall be strictly followed.

By order,

**Sd/-
[Chaitali Chatterjee (Das)]
Registrar General**