

NAME – Dave Kandarp Dushyant

ROLL NO. – 09

CASE - 01: -

NAME OF THE CASE – Arnesh Kumar vs. State of Bihar

CITATION OF THE CASE – (2014) 8 SCC 273

DATE OF THE JUDGMENT – July 2, 2014.

RELEVANT PROVISIONS OF LAW - ARREST

- The Indian Penal Code, 1860 – Section 498-A.
- The Dowry Prohibition Act, 1961 – Section 4.
- The Code of Criminal Procedure, 1973 – Sections 41,41A,57,167,438.
- The Constitution of India, 1950 – Article 22(2).



**ARNESH KUMAR VS. STATE OF BIHAR
(2014)**

**#BAIL # 498-B #NO DIRECT ARREST
#SECTION 41A NOTICE**

ARNESH KUMAR VS. STATE OF BIHAR

FACTS OF THE CASE: -

1. The marriage of Arnesh Kumar and Sweta Kiran was commenced on 1st July, 2007. After years of marriage Sweta Kiran alleged that her in-laws demanded eight lakh rupees, a Maruti Car, and Air Conditioner, a television set, etc., and when the issue was put in front of her husband, he too supported his family and brow-beat (to frighten or threaten someone) to marry another woman. Further, she also accused that she was thrown out of the house due to the non-fulfillment of the demand of the dowry.
2. The husband, Arnesh Kumar was arrested under Section 498-A of the Indian Penal Code, 1860 and also under Section 4 of the Dowry Prohibition Act, 1961.
3. Arnesh Kumar denied all the complaints lodged against him by his wife and applied for anticipatory bail. The bail was rejected by the Sessions Court and the High Court. He was not satisfied by the decision of the Courts and appealed to the Supreme Court of India by the way of a Special Leave Petition which was accepted by the Court.

JUDGMENT OF HON'BLE SUPREME COURT OF INDIA: -

- The Supreme Court granted provisional bail to the applicant on certain conditions.
- The Supreme Court said that “Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled views.
- The wives nowadays harass their husbands and their relatives by getting them arrested under this provisions. Therefore, the Court held that, “No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation.
- The Court concluded its decision on the case by ordering the directions to be followed not only to the cases related to Section 498A of IPC and Section 4 of the Dowry Prohibition Act, 1961 but also to the cases where the offence is punishable with

imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.

SUPREME COURT STATED DIRECTIONS FOR POLICE TO BE FOLLOWED: -

1. All the State Governments to instruct its Police officers not to automatically arrest when a case under section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC.
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 filed 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 authorising 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 authorise 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 41A of Cr. PC 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 the 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 High Court having territorial jurisdiction.
8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

CASE - 02: -

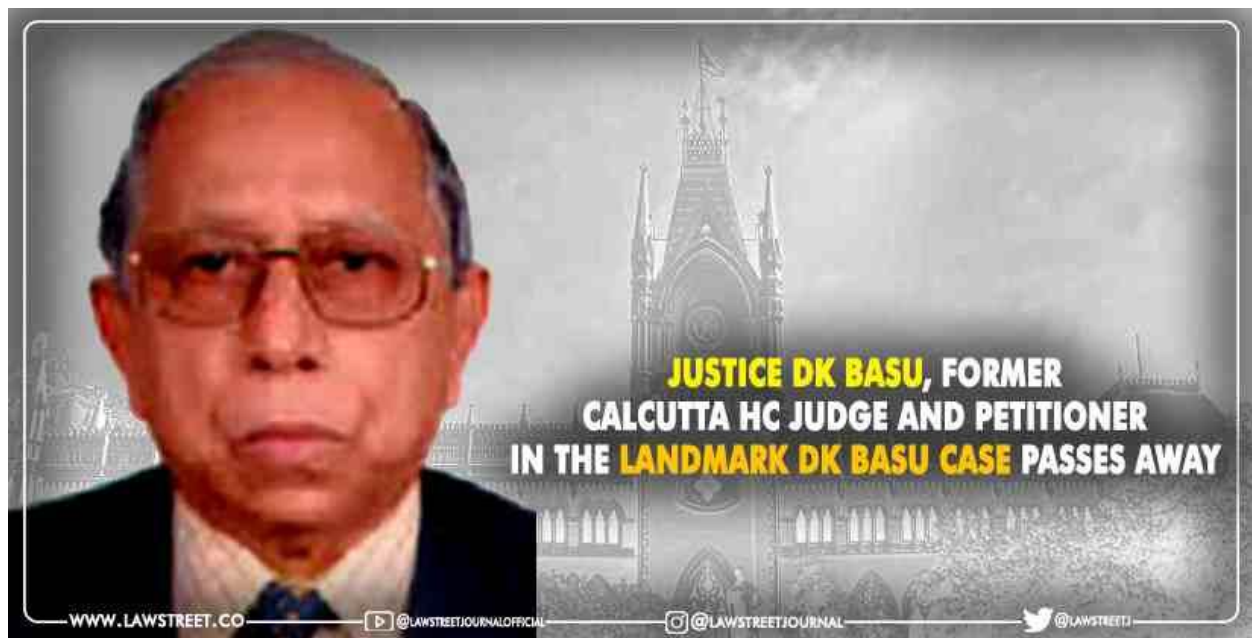
NAME OF THE CASE – D. K. Basu vs. State of West Bengal (Custodial Deaths)

CITATION OF THE CASE – (1997) 1 SCC 416: 1997 SCC (Cri) 92

DATE OF THE JUDGMENT – December 18, 1996.

RELEVANT PROVISIONS OF LAW – CUSTODIAL DEATHS IN INDIA

- The Indian Penal Code, 1860 – Section 147, 149, 201, 218, 220, 302, 304, 331, 34 and 342.
- The Code of Criminal Procedure, 1973 – Sections 41, 46, 49, 50, 53, 54, 56, 57, 167, 174 and 176.
- The Constitution of India, 1950 – Article 20(3), 21, 22, 226 and 32.



D. K. BASU VS. STATE OF WEST BENGAL

FACTS OF THE CASE: -

1. On 26th August 1986, the Executive Chairman – Mr Dilip Kumar Basu of Legal Aid Services – West Bengal, a non-political organisation wrote a letter to the Chief Justice of India pertaining to some news article in the Telegraph Newspaper publishing events of deaths in police custody.
2. The petitioner requested that his letter be accepted as Writ Petition under “Public Interest Litigation” Category. As his letter addressed some importance contentions it was considered to be treated as a Writ Petition and the respondents were served notice.
3. Mr Ashok Kumar Johari, while the said petition was still under consideration send another letter to the Chief Justice addressing the death in Aligarh Police Custody of Mahesh Bihari of Pikhana. Both of these letters were treated as Writ Petition.
4. On 14th August 1987, the Court issued a notice through Order to all the States to come up with suitable suggestions within two months. This led to the filling of several affidavits in the response of the notice by different states including West Bengal, Assam, Orissa, Haryana, Meghalaya, Maharashtra, Manipur and Himachal Pradesh. The allegations were denied by the state of West Bengal.
5. The mains issues were :
 - (i) Death of several accused in the Police Custody due to Custodial Torture by police.
 - (ii) Arbitrariness while arresting a person by the police.

JUDGMENT OF HON’BLE SUPREME COURT OF INDIA: -

- When the right is guaranteed by the State, it is against the State that the remedy must be sought if the constitutional obligation imposed has not been fulfilled.
- Article 21 guarantees the right to life and personal liberty and has been held to include the right to live with human dignity. It thus also includes a guarantee against torture and assault by the State or its functionaries.

- Protection against arrest and detention is guaranteed by Article 22. It provides that no individuals arrested shall be detained in custody without being informed of the grounds of arrest and that arrested individuals shall not be denied the right to consult and defend themselves by a legal practitioner of their choice.
- Article 20(3) provides that a person accused of an offense shall not be compelled to be a witness against himself or herself.

THE FOLLOWING ARE THE GUIDELINES ISSUED BY THE SUPREME COURT IN THIS CASE: -

1. **Accurate, visible and clear identification and name tags:** The police arresting and handling the interrogation must have accurate, visible name tags with their designations. A recorder must be maintained in the register for all those carrying out the interrogation.
2. **Memo of arrest:** At the time of arrest a memo of arrest must be prepared by the arresting police officer which shall be attested by at least 1 witnesses who can be a family member of the arrestee or any respectable person of the locality from where the arrestee was arrested. Countersigned by the arrestee with date and time of the arrest.
3. **Right to inform:** The arrestee or detainee has the right to inform anyone friend or relative or other person is known to him as soon as possible of his arrest or detention at the particular place unless the memo of arrest is attested by any such friend or relative.
4. **Notification by police:** The police with the help of Legal Aid Organisation in the District and police station in the area concerned must notify the time, place of arrest and venue of custody of the arrestee to his next friend or relative living outside the district or town.
5. **An arrestee must be informed:** After his or her arrest or detention the person must be informed and made aware of this right to inform his friend or relative.
6. **Diary entry:** At the place of arrest an entry should be made in the diary with the names and particulars of the police officials in whose custody is the arrestee along with the arrestee's name and the name of his next friend.
7. **Inspection Memo:** If the arrestee request for him to be examined of any existing major or minor injuries present of his/her body at the time of arrest must be recorded and this

“inspection memo” be signed by both the police officer and the arrestee. A copy of the same should be provided to the arrestee.

8. **Medical Examination:** A trained doctor who must be on the panel of approved doctors appointed by the Director, Health Service of the State or Union Territory concerned should in every 48 hours examine the arrestee. The director of the Health Services should prepare such panels in all tehsils and districts.
9. **Copies to the Magistrate:** The Magistrate must have copies of all documents including the memo of arrest sent to him.
10. **The assistance of lawyer:** The lawyer of the arrestee must be allowed to meet the arrestee during his interrogation, though not throughout the interrogation.
11. **Police Control room:** There should be a police control room in all districts and State headquarters which should have information regarding the arrest of a person and the place of his custody communicated to the control room by the officer causing the arrest within 12 hours of arrest and the same information must be displayed on a conspicuous notice board.