

**HIGH COURT OF JUDICATURE APPELLATE SIDE**  
**AT BOMBAY**

**NOTIFICATION**

**No. Rule/Misc – 01/2023**

**Date : 21/10/2023.**

In exercise of the powers conferred under Article 227 of the Constitution of India and all other enabling powers and in compliance of the directions issued by the Hon'ble Supreme Court of India vide order dated 31.07.2023 passed in *Criminal Appeal No. 2207 of 2023*, titled as ***Md. Asfak Alam Vs. The State of Jharkhand & Anr. 2023 SCC Online SC 892***, the Hon'ble the Chief Justice is pleased to direct that :

1. The police shall not automatically arrest when a case under Section 498-A IPC is registered. The Police shall first satisfy themselves about the necessity for arrest under the parameters laid down in *Arnesh Kumar Vs. State of Bihar and Anr. [Criminal Appeal No. 1277 of 2012]* flowing from Section 41 CrPC;
2. All police officers shall 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;

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6. Notice of appearance in terms of Section 41-A CrPC 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 the High Court of Bombay.
8. Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the Bombay High Court.
9. The directions as aforesaid shall not only apply to the case under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, but also such cases where 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.

However, in view of Supreme Court's Judgment dated 07<sup>th</sup> August 2023, in Criminal Appeal Nos. 2284-2285 of 2023 in the matter of V. Senthil Balaji *Vs. The State Represented by Deputy Director and Ors.*, Section 41A of CrPC shall have no application to an arrest made under the Prevention of Money laundering Act, 2002.

This Notification shall come into force with immediate effect.

Strict compliance of the above directions is ensured.

HIGH COURT OF JUDICATURE )  
AT BOMBAY )  
Dated 21<sup>st</sup> OCTOBER, 2023 )

Sd/-  
R. N. JOSHI  
REGISTRAR GENERAL