



JUDICIAL TRAINING & RESEARCH INSTITUTE, U.P., LUCKNOW

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Important Circular Letters Regarding Arrest, Remand and Protection to Prisoners

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*“Darkness of Cages shall allow you to Breathe,
For Thou shall not be killed of Inhumanity!!”*

- Every person has to be treated as a human being first, irrespective of the fact that such person is a criminal. Even so the accused is considered innocent till proven guilty by a court of law.
- Life and liberty is a sacred freedom of our sanctified Constitution under Article 21.
- There are several guidelines and circulars based on the provisions of Law and the Deliberations of Hon’ble High Court, Allahabad which have been circulated for strict compliance. Arrest and Remand process are complementary to each other, it is necessary to go through some circulars issued by DG Police from time to time for strict compliance by concerned Police Officers. They are as under ;

DG Circular No. 41/ 2014 June 17, 2014

- To create awareness regarding the amendments in S. 41 of Cr.P.C. in year 2008 and 2010.
- It was noticed that the compliance was being done in superficial and routine manner and records were not maintained properly.
- It was regretted that there was neither proper awareness nor compliance.
- The provision regarding 41(1)(a), (1)(b) etc. were explained in simple language for better understanding.

Directions

- ✧ Arrest after reasonable complaint, credible information and after collection of cogent evidence during investigation and not only on the basis of being named in FIR.
- ✧ The accused should only be arrested after the compliance of provisions enumerated in Sec. 41(1)(a).
- ✧ The reasons are to be recorded in CD and GD compulsorily.
- ✧ The reasons for not arresting the accused person(s) to be recorded in CD & GD.
- ✧ The reasons not to be recorded in routine manner.
- ✧ If decided not to arrest, then issuance of notice u/s 41A necessary.
- ✧ If not complied by accused then arrest can be made after proper service of notice.
- ✧ Activation of District Control Rooms u/s 41C of CrPC.
- ✧ Regular information to be uploaded on dgpcontrol-up@nic.in or controlroomdgp@gmail.com.

Circular No DG 51/2014, Sept 13, 2014

Directions regarding CrI. App No. 1277/2014 in Arnesh Kumar vs. State of Bihar.

Compliance of the provision u/s 41 Cr. P.C. especially regarding S. 498A IPC.

All Police Officers to be provided check list u/s 41 (1)(b) (ii) Cr.PC. containing 11 points which should be invariably attached with remand papers.

Arresting officer/IO must ensure that the particulars of the check list are filled properly before sending the accused to Magistrate/ Court.

Magistrate/Courts to peruse the reports of police officers before remanding the accused to judicial custody with reasons to be recorded.

If Police officer decides, not to arrest an accused then the report to this effect with reasons to be sent to concerned Magistrate and SSP/SP within two weeks.

Notice u/s 41A Cr. P.C. may be served on the accused. Earlier in compliance of the order dated 11-10-2011 of Hon'ble Allahabad High Court in **Shaukin vs State Of UP (CrI. Misc.writ pet. No. 17410/2011)**, *directions were issue for compliance of sec 170 (1) Cr. P.C. according to which, on completion of investigation if sufficient evidence has been collected, the accused shall be forwarded in custody to the Magistrate concerned unless he has been released on bail.*

The Police Officer not complying the order as above mentioned shall be subject to the Departmental Action as well as contempt proceedings.

DG Circular No. 06/2019, Jan 20, 2019

Issued in compliance of order dated 14-09-2018 passed by Hon'ble Supreme Court in *Writ Petition (Civil) No. 73/2015 in Social Action Forum for Human Right & Ors. Vs. Union of India.*

Police to follow the directions laid down in S. 41 Cr.PC. *Joginder Kumar vs State of UP (1994) 4SCC 260, D. K. Basu Vs. State of WB (1997) 1 SCC 416, Lalita Kumari vs State of UP & Ors (2014) 2 SCC 1 and Arnesh Kumar vs. State of Bihar and Ors (2014) 8 SCC 273* regarding arrest.

DG Circular No. 5/2021 dated 19.02.2021

Crl. Misc. Writ Pet. No. 17732/ 2020 in Vimal Kumar vs. State of UP by Hon'ble Allahabad High Court.

Mandatory compliance of Sec. 41 (A), 41(B), 41(C), 41(D) Cr. PC & compliance of check list issued u/s 41 (1)(b) (ii) Cr. PC.

Important Circulars regarding Remand of accused issued by Hon'ble High Court, Allahabad.

REMAND

C.L. No. 58/VIIb-16 dated 17th April, 1974

- ❖ In order to avoid harassment to persons arrested by the Police to be produced before a Judicial Magistrate, a time schedule should be fixed by the Judicial Magistrate with Superintendent of Police so that persons detained shall be produced within that schedule and if any Police Officer does not adhere to the time schedule without a reasonable cause, action should be taken against him.
- ❖ The duty of Magistrates extends even beyond the office hours and they should be available for purposes of remand without showing any reluctance in this regard.

C.L. No. 102/VIIb-47 dated 5th August, 1975

- ❖ District Judges should impress upon all the Judicial Magistrates on duty for granting bails and remands and for the disposal of other urgent matters during holidays or on Sundays to do this work in court at a fixed time duly notified and intimated to all concerned, including the Public Prosecutors.

C.L. No. 123/VIIIh-16 dated 25th September, 1975

- ❖ It is also impressed upon them that all provisions of law in respect of remand should also be observed strictly.
- ❖ The Presiding Officers of the criminal courts should carefully examine and scrutinize warrants and remand papers before putting their signatures on them, so that the chances of bail applications being allowed solely on the ground of technical flaw are eliminated.

C.L. No. 97/VIIb-16 dated 16th August, 1979

- ★ The Court has noticed that the Magistrates have authorized detention of the accused persons in jail custody without the accused being produced before them. Under paragraph (b) of proviso to sub-section (2) of Section 167 of Code of Criminal Procedure, 1973, no such detention order can be passed by a Magistrate unless the accused is produced before him.
- ★ All the Judicial Magistrates should act strictly in accordance with the said provision of law.

C.L. No. 51/VIIb-47 dated 17th August, 1984

- ★ The court has noticed that when an accused is produced before the court for remand, normally the police papers are not available with the court, either because they are sent late or they are withheld by court-moharrir.
- ★ In the absence of these papers, the bail application cannot be entertained.
- ★ At times this delay in receipt of papers and presence of accused brought for remand, results in non-consideration of application for bail, and often leads to confrontation between the lawyers and the officers.
- ★ Attention of all the Presiding Officers is invited towards the provisions of section 167 and 172 of the Code of Criminal Procedure, 1973, and they are directed to see that in future no such violation of the law is permitted.
- ★ The Presiding Officers should act in accordance with the provisions contained in section 167 of the Code, while remanding the accused in custody brought before them for remand.