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Arrest should be avoided until very necessary: HC

NEW DELHI, Feb 1: Stressing that the liberty of a citizen is of paramount importance, the Delhi High Court has directed the CBI, police and other investigating agencies to avoid arrest of a person until it was "very necessary" for the purpose of gathering evidence.

Maintaining that arrest should always be avoided if the probe could be completed even otherwise and accused gives full co-operation, Justice J D Kapoor said "the liberty of citizen and a Constitutional guarantee cannot be incised and therefore the police or investigating agencies should not remain under the impression that in every cognizable and non-bailable offence they should invariably arrest the offender".

The High Court's direction was delivered while holding prima facie "illegal" a trial Court order refusing to accept a CBI chargesheet on the ground that the accused was not arrested during the investigation of the case.

"It (Trial Court) has no power to return the chargesheet directing the Investigating Officer to first produce the accused in custody," the Court held.

Referring to the provision of arrest, the Court said it has been much abused and exploited by the police in offences related to section 498A/406 (cruelty by husband for dowry/ criminal breach of trust) of IPC where all relatives including husband and even old or minors are arrested.

Emphasising that unless the allegations are of "very serious nature" and "highest magnitude", the arrest should always be avoided", the Court observed "arrest of a person for less serious or such kinds of offence or offences which can be investigated without arrest by the police cannot be brooked by any civilized society".

The Court said arrest becomes necessary if the offence alleged was of grave nature and prescribes severe punishment and there was likelihood of an offender either absconding or not appearing on being summoned or his fleeing away from justice or judgement.

The Investigating Officer of a police station or CBI should arrest an accused for cognizable and non-bailable offence if it becomes necessary that only the custodial interrogation of an offender would help in the recovery of incriminating articles or weapons of offence or eliciting information as to his accomplice etc or for the purpose that would help in gathering evidence to prove the guilt, the Court said.

"Power to arrest is altogether different than the need for arrest," the Court observed and added "no authority howsoever powerful or mighty can be allowed to deny a person his liberty as it hits at the very foundation of democratic structure". (PTI)

