



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1197 OF 2022

Abhijit Arjun Padale
Adult Indian Inhabitant,
Age: 47 years, Occ. Journalist,
Residing at: Leopara Street,
Damien Apartments, Flat No.401,
Bhayander West, Thane, 401101.

.... Petitioner

v/s.

- (1) The State of Maharashtra
Through APP,
Bombay High Court.
- (2) The Secretary,
Home Department, Mantralaya,
Mumbai.
- (3) The Commissioner of Police Mumbai,
25, Dr. Dadabhai Naoroji Rd,
Police Colony, Dhobi Talao,
Lohar Chawl, Kalbadevi,
Mumbai, 400001.
- (4) Joint Commissioner of Police (Crime)
Law and Order,
Dr. D. N. Road, Fort,
Opposite Crawford Market,
Mumbai, 400001.
- (5) The Deputy Commissioner of Police
Zone 9 Office, Hill Road,
Bandra West, Mumbai 400050,
(Near Bandra Police Station).

HEMANT
CHANDERSEN
SHIV

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HEMANT
CHANDERSEN SHIV
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- (6) The Assistant Commissioner of Police
Krishna Chandra Hill Road, Bandra West,
Bombay, 400050.
- (7) The Senior Inspector of Police,
Vakola Police Station,
Mumbai.
- (8) The Police Sub-Inspector,
Ishwar Raikar,
Vakola Police Station,
Mumbai

....Respondents

Mrs. Medha Jondhale, a/w Mr. Anand Jondhale, Ms. Rajnandini Jondhale & Mr. Harshvardhan Shinde, i/b Jondhale & Co. for the Petitioner.

Mrs. P. P. Shinde, APP, for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
SHYAM C. CHANDAK, JJ.**

RESERVED ON : 28th JUNE, 2024
PRONOUNCED ON : 22nd AUGUST, 2024

JUDGMENT: [PER- SHYAM C. CHANDAK, J.]

- 1) By this Petition, filed under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973, the Petitioner seeks a writ, an Order or direction thereby declaring the Petitioner's arrest and detention in F.I.R. No. 24 of 2022, registered

with Vakola Police station, as illegal. Further, Petitioner seeks a direction to investigate into the alleged illegal action on the part of the Police authorities and subordinates, who have failed to follow the direction issued by the Hon'ble Supreme Court in the case of ***Arnesh Kumar vs. State of Bihar and Anr.***¹ The Petitioner has also sought a direction to the Respondents to pay compensation of Rs.5 Crore to the Petitioner for his illegal detention of 3 days *i.e.*, from 15th January, 2022 to 18th January, 2022.

2) Heard learned Counsel for the parties. Perused the record. Senior Police Inspector Mr. Prakash Khandekar and Prakash C. Kamble-P.S.I, have filed independent Affidavit-in-Reply and resisted the Petition on behalf of Respondent No. 7-Vakola Police Station.

3) Rule. Rule is made returnable forthwith, with the consent of the parties and Petition is taken up for final disposal. Learned A.P.P waives serves on behalf of the Respondents.

4) The facts giving rise to this Petition are that, the Petitioner is

1 (2014) 8 SCC 273

a journalist by profession. The Petitioner was arraigned as accused in the F.I.R. No. 24 of 2022, registered with Vakola Police station on 15th January, 2022 under Sections 384 and 506 of the Indian Penal Code, 1860 (“I.P.C.”, for short) on the report of Mohd. Akil Siddhique. On the same day, the Petitioner came to be arrested by the Police. The Petitioner was produced before holiday Court i.e., learned Additional Chief Metropolitan Magistrate, 22nd Court, Mumbai on 16th January, 2022. Said learned Metropolitan Magistrate noted that, the Petitioner was arrested without following the guidelines laid down in the case of *Arnesh Kumar* (supra), hence, remanded the Petitioner to M.C.R. Immediately, bail application was submitted by/on behalf of the Petitioner. The learned Magistrate called for the say of the A.P.P. to the bail Application. The A.P.P. was not present, therefore, the Petitioner had to remain in jail till 18th January, 2022. Ultimately, the bail application was heard by the regular Court i.e. 71st Court of Metropolitan Magistrate, at Bandra, and the Petitioner was granted bail on 18th January, 2022.

5) Learned counsel for the Petitioner submitted that, the

offence alleged against the Petitioner were not of a serious nature like *murder, rape, dacoity* etc. but one u/Sec.384 of I.P.C. which is punishable with imprisonment which may extend to three years, or with fine, or with both and u/Sec. 506 of I.P.C. which is punishable with imprisonment which may extend to two years, or with fine, or with both, as the alleged threat was not to cause death or grievous hurt etc. Yet, no reasons were recorded before arresting the Petitioner to justify his arrest. This is clear violation of Section 41 of Cr.P.C. That apart, no notice under Section 41A of Cr.P.C. was served upon the Petitioner before arresting him. Therefore, the Petitioner's arrest, detention in Police custody and in jail for a total period of 3 days *i.e.*, from 15th January, 2022 to 18th January, 2022 was not only unwarranted but also illegal. According to the Petitioner, the Police authorities arrested the Petitioner, just to torture, humiliate and harass him, however, it ultimately deprived the Petitioner of his fundamental right to life and liberty as guaranteed to him under Article 21 of the Constitution of India. Hence, the Petition may be allowed, as prayed for.

6. Learned A.P.P. Mrs.Shinde submitted that, the first

informant along with others had submitted a written complaint with the Vakola Police station on 10th August, 2021 alleging that the Petitioner was demanding money from them for running their road side small business and in case, they failed to comply the said demand, the Petitioner would inform the officer of BMC to take action against them. Thereafter, an enquiry was held and the aforesaid crime was registered.

6.1) Learned A.P.P. submitted that, the Respondent No. 8-P.S.I. Raikar was a probationary officer who registered the F.I.R. Respondent No.8-Mr. Ishwar Raikar, the then investigation officer had prepared the notice under Section 41A of the Cr.P.C, however, said officer did not serve that notice upon the Petitioner. She submitted that when the duty hours were changed and P.S.I. Dhuri was the day duty officer, P.S.I. Pandhare apprehended the Petitioner, brought him to Vakola Police station and arrested him. Thereafter, Petitioner was produced before the learned Metropolitan Magistrate on 16th January, 2022. However, the learned Magistrate remanded the Petitioner to MCR, as the condition precedent to arrest under Section 41 of Cr.P.C. was not complied with by the Police.

6.2) Learned A.P.P. submitted that, meanwhile the investigation was assigned to PSI Prakash Kamble. She submitted that, on completion of the investigation charge-sheet came to be filed on 9th January, 2023. She submitted that, the notice under Section 41 (1) (A) of Cr.P.C. was part of the charge-sheet, therefore, in the Affidavit-in-Reply of Mr. Kamble, it is mistakenly stated that said notice was served upon the Petitioner and as such, it cannot be said to be a false statement. She submitted that, the Petitioner was remanded to judicial custody on 16th January, 2022 by a judicial Order, therefore, the period of the Petitioner's detention from 15th January, 2022 to 18th January, 2022 cannot become illegal. Hence, the Petition may be dismissed.

7) Section 41 of Cr.P.C. pertains to power when Police may arrest without warrant. As held in the case of *Arnesh Kumar* (supra),

“9. from a plain reading of provision of Section 41 (1) (b), it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the Police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to

prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the Police officer; or unless such accused person is arrested, his presence in the Court whenever required cannot be ensured. ... Law mandates the Police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the Police officers to record the reasons in writing for not making the arrest. In pith and core, the Police office before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the Police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the Police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.PC.

10. ... During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167 Cr.P.C. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner. Before a Magistrate authorises detention under Section 167, Cr.P.C., he has to be first satisfied that the arrest made is legal

and in accordance with law and all the constitutional rights of the person arrested is satisfied. If the arrest effected by the Police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the Police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest under Section 41 Cr.PC has been satisfied and it is only thereafter that he will authorise the detention of an accused. The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order. It shall never be based upon the ipse dixit of the Police officer, for example, in case the Police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement etc., the Police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the Police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording its satisfaction in writing that the Magistrate will authorise the detention of the accused. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant and secondly a reasonable conclusion could at all be reached by the Police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

11. Another provision i.e., Section 41A Cr.PC aimed to avoid unnecessary arrest or threat of arrest looming large on accused

requires to be vitalised. Section 41 A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009), which is relevant in the context reads as follows:

“41A. Notice of appearance before Police officer.- (1) The Police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the Police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the Police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.” Aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41 (1) Cr.PC, the Police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the Police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the Police office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 (1) Cr.PC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

We are of the opinion that if the provisions of Section 41 (1) Cr.PC which authorises the Police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the Police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 (1) Cr.PC for effecting arrest be discouraged and discontinued.

8) Now turning to the case in hand. Admittedly, the offence alleged against the Petitioner was non-bailable but not punishable with imprisonment of more than seven years, and as such notice under Section 41A ought to have been served on the Petitioner. Even though the notice under Section 41A was allegedly prepared, it was not served upon the Petitioner before arresting him. The fact, that the said notice was not served on the Petitioner is not disputed. Neither before arresting the Petitioner, separate reasons recorded by the Police, as to why the Petitioner's arrest was so necessary nor reasons recorded as to why the arrest of the Petitioner was not necessary. Existence of the notice under Section 41A is sufficient to presume that, the arrest of the Petitioner was not at all warranted. The report dated 15th January, 2022 submitted by

the Police before the Metropolitan Magistrate claims that, even though the Petitioner was intimated to attend in the Police Station for enquiry, he did not attend, however, the date and mode of giving said intimation is not stated in the said report.

9) As stated in the remand application, the Police accosted the Petitioner on 15th January 2022, at about 18:08 hrs., in front of Tipvis hotel, Santacruz (E.) and arrested him there itself. On the next day, the Police produced the Petitioner with a remand Application seeking his Police custody. All this, in our considered opinion, was done in a mechanical and casual manner. Thus, said action was in stark violation of the mandates of the Cr.P.C. and the guidelines laid down by the Hon'ble Supreme Court in the case of *Arnesh Kumar* (supra). The said action, ultimately resulted in the Petitioner remaining in Police custody till his production before the Metropolitan Magistrate. This is certainly not legal, meaning thereby, not in accordance with law. Thereafter, the Petitioner had to remain in jail as no A.P.P. was available to offer say to his bail application. Thus, the Petitioner's liberty was curtailed unnecessarily.

9.1) The Magistrate ought to have been vigilant while sending the Petitioner to jail for want of say of the A.P.P. The said action of the Magistrate reflects non application of mind in the aforesaid facts.

10) As held in the case of *Arnesh Kumar* (supra), arrest brings humiliation, curtails freedom and cast scars forever. The Hon'ble Supreme Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the Police officers must be able to justify the reasons thereof. 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. As held in the case of *D. K. Basu vs. State of West Bengal*², the latin maxim '*salus populi est supreme lex*' (the safety of the people is the supreme law) and *salus republicae est suprema lex* (safety of the state is the supreme law) co-exist and are not only important and relevant but

² 1997 (1) SCC 416

lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The action of the State, however, must be “right, just and fair”. These basic cautions have been ignored in this case before arresting the Petitioner.

11) The Supreme Court has time and again frowned on unnecessary arrests even in non-bailable offences. As observed by the Apex Court in *Joginder Kumar vs. State of U.P.*³, the quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of criminal law. The Apex Court in para 20 of the said judgment, observed as under :

“20. ... No arrest can be made because it is lawful for the Police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in Police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. 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 for a Police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest.

³ (1994) 4 SCC 260

*Denying a person of his liberty is a serious matter.
.....”*

(emphasis supplied)

12) Conspectus of the above discussion is that, as the Police failed to follow the mandate of the Cr.P.C. and obey the directions of the Hon'ble Apex Court in the case of *Arnesh Kumar* (supra), the arrest of the Petitioner was not legal. Because of the arrest, the Petitioner had to go to jail and wait for bail. This directly deprived the Petitioner of his right to liberty. Therefore, necessary departmental enquiry is essential in the matter by a senior officer considering what is observed by us hereinabove.

13) In view thereof and having regard to the peculiar facts and circumstances of this case, we deem it appropriate to pass the following Order, in the interest of justice :

ORDER

(i) The respondent No. 3- The Commissioner of Police, Mumbai, to appoint an Officer not below the rank of Deputy Commissioner of Police, to conduct an inquiry with regard to the arrest of the Petitioner and conduct of the police officers of the Vakola Police Station. The

petitioner to be heard in the inquiry so conducted. The enquiry to be completed within eight weeks.

(ii) The Respondent No.1-State to pay compensation of Rs.25,000/- to the Petitioner within ten weeks from the date of uploading this Judgment and Order on the official website of this Court.

(iii) The said compensation amount shall be recovered from the Police Officer/s, who is/are ultimately found responsible for arrest of the Petitioner without following the procedure of law.

(iv) Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

(v) Stand over to 12 weeks, *i.e.*, 28th November 2024, for presentation of the report of the inquiry and payment of the compensation.

(vi) The registry to forward the copy of this Judgment and Order to the then learned Additional Chief Metropolitan Magistrate, Court No. 22, Andheri, Mumbai who dealt with the first remand application and sent the Petitioner to jail on 16th January, 2022, and call for the acknowledgment of receipt of the same, for record purpose.

(vii) All concerned to act on the authenticated copy of this Judgment.

(SHYAM C. CHANDAK, J.)

(REVATI MOHITE DERE, J.)