

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Writ Petition No.906 of 2018

- 1) Rajesh s/o Mohanlal Kothari,
Age 64 years,
Occupation : Advocate,
R/o Munot Estate, Station Road,
Ahmednagar.
 - 2) Mangala w/o Rajesh Kothari,
Age 54 years,
Occupation: Advocate,
R/o Munot Estate, Station Road,
Ahmednagar.
 - 3) Renu w/o Ajeet Zarekar @
Renu d/o Rajesh Kothari,
Age 32 years,
Occupation : Advocate,
R/o Munot Estate, Station Road,
Ahmednagar.
- .. Petitioners.**

Versus

- 1) The State of Maharashtra.
 - 2) Vishal L. Sanas,
Age 40 years,
Occupation: Service as
P.S.I., Kotwali Police Station,
Ahmednagar.
- .. Respondents.**

Shri. N.S. Ghanekar, Advocate, for petitioners.

Shri. M.M. Nerlikar, Additional Public Prosecutor, for
respondent Nos.1 and 2.

**Coram: T.V. NALAWADE &
K.K. SONAWANE, JJ.**

Date: 11 JULY 2019

JUDGMENT (Per T.V. Nalawade, J.):

1) Rule, rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The proceeding is filed under Articles 226 and 227 of the Constitution of India for compensation of Rs.5 lakh and also for relief of action against respondent No.2, a police officer. Allegations of illegal arrest and illegal detention are made by the petitioners who were practising Advocates at the relevant time. Compensation is sought from the State Government, respondent No.1 and the police officer, who made arrest and obtained police custody remand against the petitioners.

3) The petitioners were arrested in CR No.I-276 of 2014 registered with Kotwali Police Station Ahmednagar on 26-10-2014 in the evening time for offences punishable under sections 376, 504, 506, 34 of Indian Penal Code. The report is given by a lady aged about 26 years and she is a businesswoman. In the F.I.R. allegations are made

mainly against Abhijit, son of petitioner Nos.1 and 2. He was also practising Advocate at the relevant time. It is contended by the informant that she had come in contact with Abhijit in the year 2007 when she was attending tuition of Accounts subject in Ahmednagar. It is her contention that acquaintance then developed into love and from the years 2007 to 2013 they had an affair.

4) It is the contention of the informant that in the year 2013 when she was alone in her house, Abhijit came there and requested to allow him to have sexual intercourse with her. It is her contention that she refused to do so and then Abhijit promised to marry. It is contended that due to such promise she gave consent and from that time they had physical relationship. It is contended that after the first incident, on many occasions due to such promise, she had allowed Abhijit to have sexual intercourse in her house. It is contended that on one occasion she was called to the residential place of Abhijit by Abhijit as no other members were at home and there also Abhijit had taken sexual intercourse with her by giving promise of marriage.

5) It is contention of the informant that in the year 2013 husband of petitioner No.3 (sister of Abhijit) committed suicide. It is contended that a crime was registered in respect of that incident and due to that all the petitioners had virtually absconded for many days. It is contended that in January 2014 when bail was granted to the petitioners they appeared and after that Abhijit again started contacting her. It is contended that after 25th February 2014 on many occasions Abhijit took sexual intercourse with her.

6) It is contention of the informant that she is in the business of running tourist centre and Abhijit had come with her to Tirupati. It is her contention that on that occasion Abhijit and she had stayed in a room of a guest house from Tirupati for 2 days and there also they had sexual relationship.

7) It is contention of the informant that when she became pregnant and when she informed about it to Abhijit, Abhijit asked her to abort the child. It is her contention that she requested Abhijit to marry with her

but he refused to marry. It is contended that even after that day, Abhijit had taken sexual intercourse with her.

8) It is the case of the informant that as Abhijit was refusing to marry with her, she contacted petitioner Nos.2 and 3, mother and sister of Abhijit. It is her case that she was called to the residential place by petitioner Nos.2 and 3 and there threat of life was given to her by present petitioner Nos.2 and 3. It is contended that she was asked by petitioner Nos.2 and 3 to abort the child. It is contended that due to such threat of petitioner Nos.2 and 3 she disclosed everything to her father. It is contended that on 12-10-2014 petitioner Nos.1 and 2 went to the office of her father and there they gave threat of life to her father and asked to see that the informant aborts the child. It is contended that on her mobile phone threat was given by petitioner No.1 to her father and brother. It is contended that on 22-10-2014 petitioner No.1 called the informant and her father to his residential place and there, all the petitioners gave them offer of Rs.5 lakh subject to condition that the informant aborts the child. It is contended that she refused to accept the offer and then

threat of life was given to her and as there was no other alternative, she approached police to give report. The report was given on 26-10-2014 when the last incident had taken place on 22-10-2014.

9) It is the contention of the petitioners that they had no concern whatsoever with the so called allegations of rape made against Abhijit. It is their contention that even if the allegations made against them are accepted as they are, they could have made out the offences under sections 504, 506 of Indian Penal Code. It is their contention that these offences are bailable and non cognizable but they were arrested by respondent No.2 on 26-10-2014. It is contended by the petitioners that even when the offences are bailable, necessary procedure was not followed by respondent No.2 and they were not released on bail on that day. It is their contention that they were kept in police lock up of Kotwali Police Station in that night between 26 and 27 October 2014 and they were produced before the Judicial Magistrate on 27-10-2014. It is their contention that even when offences are bailable, in the remand report police custody was claimed

by respondent No.2 and the learned Magistrate granted police custody till 29-10-2014. It is contended that from 26-10-2014 to 29-10-2014 they were kept in police lock up of the aforesaid police station. It is contended that on 29-10-2014 when they were produced before the Judicial Magistrate they applied for bail on aforesaid grounds but the Judicial Magistrate rejected the application. It appears that they were released on bail by sessions Court.

10) It is the contention of the petitioners that they could not have been made accused in the crime punishable under section 376 of Indian Penal Code which could have been registered only against Abhijit. It is contended that the allegations made against them were different and the incident was also different and on the basis of such allegations only non cognizable offence could have been registered.

11) It is the contention of the petitioner No.1 that he had conducted till that date more than 500 sessions cases as Advocate all over Maharashtra. It is his contention that he was Ex-President of District Bar

Association of Ahmednagar District. It is the contention of petitioner No.2 that she was practising at Ahmednagar since 1986 on criminal side and in Motor Accident Claims matters. It is her contention that she was Vice-Chairman of Nagar Urban Cooperative Bank for about one year and she was Director for 10 years of the said bank. It is her contention that she was Legal Retainer of Ahmednagar Municipal Corporation at the relevant time.

12) It is the case of the petitioner No.3 that she was also legal practitioner and she was practising in Ahmednagar as Advocate since 2007. It is her contention that she had completed LL.M. She had done certificate courses in forensic science, in Medical Jurisprudence and in cyber crime investigation. It is contended that in the past she was Caption of Maharashtra State Carrom team and she had participated in that capacity in the competition. She has contended that at the relevant time she had a son of 2 year old and the kid was also with her in the lock up as there was nobody to look after him when she was in the lock up.

13) The submissions made show that the petitioners were released from custody after 5 days of the arrest due to the order made by the Sessions Court. It is the contention of the petitioners that they were required to undergo great mental agony and physical hardship. It is contended that news of their arrest and detention was published in news papers and due to that they are defamed in society.

14) It is contention of the petitioners that the guidelines given in the case of **Arnesh Kumar v. State of Bihar** reported as **AIR 2014 SC 2756** were not followed by respondent No.2. It is contended that in view of the directions given by the Apex Court in the case of Arnesh Kumar (supra) and other cases action needs to be taken against respondent No.2 and also against the Judicial Magistrate. It is contended that the petitioners had filed Criminal Revision No.62/2015 in Sessions Court to challenge the order of police custody remand made by the Magistrate and in that case the Sessions Court has held that both arrest and detention of the petitioners were illegal. It is contended that even compensation was

claimed by the petitioners in the criminal revision but the Sessions Court did not give compensation by observing that the Sessions Court has no such power.

15) Copy of remand report dated 27-10-2014 is produced on record. Police had given reason for arrest that the accused are likely to abscond. It needs to be kept in mind that the accused were practicing Advocates in Ahmednagar. The report shows that arrest was made at the residential place of the petitioners. Police custody remand was demanded against the petitioners by giving following reasons by respondent No.2.

- (i) Allegations made against them were serious in nature.
- (ii) Mobile handsets need to be recovered from them.
- (iii) Accused No.1 Abhijit was not yet arrested.

The order of the Judicial Magistrate shows that these reasons were accepted by the Judicial Magistrate for giving police custody remand.

16) Copy of application filed for bail before the Judicial Magistrate on 29-10-2014 is produced. In that application also it was specifically mentioned that provision of section 376 of the Indian Penal Code cannot be used against them and at the most offences punishable under sections 323, 504, 506 read with 34 of the Indian Penal Code can be made out on the basis of allegations levelled against them. They had contended that there was malice behind their arrest. It was contended that they were practicing Advocates, there was no possibility of absconding. On 29-10-2014 learned Judicial Magistrate rejected the bail application on the following grounds :

- (i) Offence punishable under section 504 Part II is punishable with imprisonment which may be upto seven years.
- (ii) There was possibility of tampering with witnesses.
- (iii) Investigation was at initial stage.
- (iv) Accused No.1 was absconding and granting bail to the petitioners may create hardship in the arrest of accused No.1.

17) Copy of judgment of Criminal Revision No.62/2015 decided by learned Additional Sessions Judge on 25-1-2018 is produced on record. This decision shows

that order of remand granted by Judicial Magistrate dated 27-10-2014 was challenged. The Sessions Court has held that the order under challenge was illegal. The learned Additional Sessions Judge has held that two days' police custody remand granted was without any justifiable reasons. The learned Additional Sessions Judge has held that offences alleged against the petitioners were bailable. By giving these reasons the order of remand is set aside by the learned Additional Sessions Judge. Learned Additional Sessions Judge did not grant compensation by observing that such relief cannot be given by exercising revisional jurisdiction by Sessions Court. Admittedly this order of the Sessions Court is not yet challenged by the present respondents.

18) In the reply-affidavit filed in the present proceeding respondent No.2 has contended that, provision of section 34 of the Indian Penal Code can be used against all the petitioners. It is contended that the petitioners have committed cognizable offence. It is also contended that as per provisions of law, when one offence is cognizable and others are non-cognizable, the case

needs to be treated as cognizable case and as section 376 of the Indian Penal Code was there, it was treated as a cognizable case.

19) In view of the aforesaid circumstances, for the present proceeding this Court goes with the presumption that the allegations made against present petitioners would, at the most, constitute offences punishable under sections 504 and 506 of the Indian Penal Code. There is no allegation at all against the petitioners that they had in any way abetted the offence of rape. In the first schedule of Code of Criminal Procedure, 1973 (hereinafter for short, "the Code") offences punishable under sections 504 and 506 of Indian Penal Code are shown as bailable. Even if threat is given of causing death or hurt and that offence is punishable for imprisonment of 7 years or fine under section 506 of the Indian Penal Code, that offence still remains bailable offence under the schedule.

20) The definition of cognizable offence is given in section 2(c) of the Code. There is reference of first Schedule to ascertain as to whether the offence is

cognizable or non-cognizable. In the first Schedule the offences punishable under sections 504 and 506 of the Indian Penal Code are treated as non-cognizable offences. In Chapter XVII, Part B provisions are given for joinder of charges. Section 218 of the Code can be used for the present case and it reads as under :-

“218. Separate charges for distinct offences.-- (1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately.

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.

(2) Nothing in sub-section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223.”

21) In section 219 of the Code it is mentioned that if three offences of the same kind are committed by the same person within a period of one year, he may be charged and tried together for such 3 offences. Section 223 of the Code runs as under.

“223. What persons may be charged jointly.-- The following persons may be charged and tried together, namely:--

(a) persons accused of the same offence committed in the course of the same transaction;

- (b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;
- (c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;
- (d) persons accused of different offences committed in the course of the same transaction;
- (e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;
- (f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;
- (g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate or Court of Session may, if such persons by an application in writing, so desire, and if he or it is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together."

22) The allegations made against the petitioners do not fall under any of the categories mentioned in section 223 of the Code or other provisions mentioned above. The acts of accused No.1 and the present petitioners cannot be considered together in view of nature of allegations made against them.

23) This Court has no hesitation to hold that the allegations made against the petitioners show that if at all offences were committed by them they were separate offences and it was not possible to join them as accused with accused Abhijit against whom there are allegations of rape. In view of these circumstances, police could not have registered the crime against present petitioners under section 154 of the Code. Even if the informant makes allegations jointly against two or more persons of aforesaid nature, it is the duty of the police officers to ascertain as to whether the offences alleged against all the accused can be registered as cognizable offence by using any of the provisions of the Code. If it is not possible, then it becomes necessary for the police officer to register crime only in respect of cognizable offence and

advise the informant to see that she/he makes separate report in respect of other incidents. For the same reason in the present matter police could not have used the provisions of section 155(4) of the Code which is indirectly mentioned by respondent No.2 in the reply affidavit. Thus, the allegations made as against present petitioners could not have been registered under section 154 of the Code and further action like arrest could not have been taken on the basis of such allegations by police in view of other provisions which this Court is quoting.

24) Section 41 of the Code shows as to when police may arrest a person without warrant. Section 41(1)(b) of the Code shows the power of police officer and it shows that the power can be used only when offence is cognizable. The provision of section 50-A of the Code shows that the provisions of arrest need to be strictly followed. The provision of section 50 of the Code is also relevant and it runs as under.

“50. Person arrested to be informed of ground of arrest and of right to bail.-- (1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the

offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf."

25) In view of the aforesaid provisions, this Court holds that the petitioners could not have been arrested as no cognizance of the offences alleged against them could have been taken by police under section 154 of the Code. Even if police believed that, it was open to them to combine the allegations made against the present petitioners with the allegations made against Abhijit. In that case also as the offences are bailable, police ought to have complied with the provision of section 50 of the Code. That also did not happen. Unfortunately, even the Judicial Magistrate did not discharge the duty assigned to the Judicial Magistrate by the Code. It is the duty of the Magistrate to ascertain as to whether the offence complained is cognizable, whether it is bailable and proper procedure is followed by police. Only because police have joined many accused in one crime, the

Magistrate is not expected to presume that all the accused can be joined in one crime. It is the duty of the Magistrate to ascertain whether the provisions given in Chapter XVII-B of the Code can be used and only after that the Magistrate needs to exercise the power given under section 167 of the Code.

26) Compliance of provision of section 50 of the Code is mandatory. It is a safeguard given to protect fundamental right mentioned in Article 21 of Constitution of India. If there is breach of such provision it is breach of the protection given in Article 22 of the Constitution of India. In that case, both, the arrest and detention becomes illegal.

27) For the present matter the guidelines given by the Hon'ble Apex Court in the case of **D.K. Basu v. State of W.B. (1997) 1 SCC 416**, the observations made by the Apex Court in the case reported as **(1972) 2 SCC 656 (D.P. Ghosh v. State of W.B.)** can be used. Learned counsel for the petitioners placed reliance on the observations made by the Apex Court in the case of **Arnesh Kumar v. State of**

Bihar (AIR 2014 SC 2756). Relevant observations of the Apex Court are at paragraphs 13 and 10 and they are as under.

“13. We are of the opinion that if the provisions of Section 41, Cr.P.C. 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, Cr.P.C. for effecting arrest be discouraged and discontinued.

10. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57, Cr.PC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey. 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.PC. 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.PC., 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."

28) It is already observed by this Court that the learned Judicial Magistrate did not apply mind in the present matter and due to that the authorization of further detention was given. Under section 167 of the Code such authorization could not have been given in the present matter.

29) Reliance can be placed on the observations made by the Apex Court in the case reported as **LEX(SC) 2018 9 25 (S. Nambi Narayanan v. Siby Mathews And Others)**. Relevant observations are at paragraphs 33 to 36 and they are as under :-

“33. From the aforesaid, it is quite vivid that emphasis has been laid on mental agony when a person is confined within the four walls of a police station or lock up. There may not be infliction of physical pain but definitely there is mental torment. In *Joginder Kumar v. State of U.P.* and others, (1994) 4 SCC 260, the Court ruled:-

“8. The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

9. A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first — the criminal or society, the law violator or the law abider....”

34. In *Kiran Bedi v. Committee of Inquiry and another*, (1989) 1 SCC 494, this Court reproduced an observation from the decision in *D.F. Marion v. Davis*, 217 Ala. 16 (Ala.1927) :-

“25. ... “The right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal

security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property.”

35. Reputation of an individual is an insegregable facet of his right to life with dignity. In a different context, a two Judge Bench of this Court in *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, (2012) 7 SCC 288 has observed:-

“55. ... reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity.”

36. From the aforesaid analysis, it can be stated with certitude that the fundamental right of the appellant under Article 21 has been gravely affected. In this context, we may refer with profit how this Court had condemned the excessive use of force by the police. In *Delhi Judicial Service Association v. State of Gujarat and others*, (1991) 4 SCC 406, it said:-

“39. The main objective of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect the citizens’ life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender. The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of police officers and police excesses in dealing with the law and order situation have been subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police ... [and it] must bear in mind, as held by this Court

that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated.”

30) In the case reported as **2016(3) Mah.L.J.(Cri) 416 (Bharat Devdan Salvi & Others v. State of Maharashtra And Another)**, in similar circumstances this Court held that it was illegal arrest and illegal detention.

31) Reliance can be placed on the observations made by the Apex Court in the case reported as **(2001) 2 SCC 700 (J.K. (Bombay) Ltd. v. Bharti Matha Mishra)**. In this Case the Apex Court has laid down that the State can be held responsible for the acts of its officers who had violated fundamental rights of personal liberty and when the officer had shown highhandedness. In the case reported as **(2016) 11 SCC 763 (Rini Johar v. State of M.P.)**, after referring to the guidelines given in the case of **D.K. Basu v. State of W.B. (1997) 1 SCC 416**, the Apex Court after considering the provisions of sections 41 and 41A of the Code directed the State to give Rs. 5 lakh as compensation to each of the petitioner in that matter. The relevant observations from the case of **Rini Johar** are at

paragraphs 23 to 26 and they are as under :-

“23. In such a situation, we are inclined to think that the dignity of the petitioners, a doctor and a practicing Advocate has been seriously jeopardized. Dignity, as has been held in *Charu Khurana v. Union of India*, (2015) 1 SCC 192, is the quintessential quality of a personality, for it is a highly cherished value. It is also clear that liberty of the petitioner was curtailed in violation of law. The freedom of an individual has its sanctity. When the individual liberty is curtailed in an unlawful manner, the victim is likely to feel more anguished, agonized, shaken, perturbed, disillusioned and emotionally torn. It is an assault on his/her identity. The said identity is sacrosanct under the Constitution. Therefore, for curtailment of liberty, requisite norms are to be followed. Fidelity to statutory safeguards instil faith of the collective in the system. It does not require wisdom of a seer to visualize that for some invisible reason, an attempt has been made to corrode the procedural safeguards which are meant to sustain the sanguinity of liberty. The investigating agency, as it seems, has put its sense of accountability to law on the ventilator. The two ladies have been arrested without following the procedure and put in the compartment of a train without being produced before the local Magistrate from Pune to Bhopal. One need not be Argus - eyed to perceive the same. Its visibility is as clear as the cloudless noon day. It would not be erroneous to say that the enthusiastic investigating agency had totally forgotten the golden words of Benjamin Disraeli:

“I repeat that all power is a trust - that we are accountable for its exercise - that, from the people and for the people, all springs and all must exist.”

24. We are compelled to say so as liberty which is basically the splendor of beauty of life and bliss of growth, cannot be allowed to be frozen in such a contrived winter. That would tantamount to comatosing of liberty which is the strongest pillar of democracy.

25. Having held thus, we shall proceed to the facet of grant of compensation. The officers of the State had played with the liberty of the petitioners and, in a way,

experimented with it. Law does not countenance such kind of experiments as that causes trauma and pain. In *Mehmood Nayyar Azam v. State of Chhattisgarh*, (2012) 8 SCC 1, while dealing with the harassment in custody, deliberating on the concept of harassment, the Court stated thus:-

“22. At this juncture, it becomes absolutely necessary to appreciate what is meant by the term “harassment”. In P. Ramanatha Aiyar’s *Law Lexicon*, 2nd Edn., the term “harass” has been defined thus:

“*Harass*.—‘Injure’ and ‘injury’ are words having numerous and comprehensive popular meanings, as well as having a legal import. A line may be drawn between these words and the word ‘harass’, excluding the latter from being comprehended within the word ‘injure’ or ‘injury’. The synonyms of ‘harass’ are: to weary, tire, perplex, distress, tease, vex, molest, trouble, disturb. They all have relation to mental annoyance, and a troubling of the spirit.”

The term “harassment” in its connotative expanse includes torment and vexation. The term “torture” also engulfs the concept of torment. The word “torture” in its denotative concept includes mental and psychological harassment. The accused in custody can be put under tremendous psychological pressure by cruel, inhuman and degrading treatment.”

26. In the said case, emphasizing on dignity, it has been observed:-

“.....The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the welfare State is governed by the rule of law which has paramountcy. It has been said by Edward Biggon “the laws of a nation form the most instructive portion of its history”. The Constitution as the organic law of the land has unfolded itself in a manifold manner like a living organism in the various decisions of

the court about the rights of a person under Article 21 of the Constitution of India. When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector....” .

32) Learned Additional Public Prosecutor argued that the matter cannot be allowed due to laches. There is no force in this submission. The order of remand of police custody passed by the learned Magistrate was challenged by the petitioners by filing criminal revision mentioned already. Said revision came to be decided in the year 2018 and only after that the present petition came to be filed. As there was such order against the petitioners it was open to them and it was also necessary for them to challenge that order. Otherwise, defence could have been taken by the State that such order was there and inquiry into the factual aspects will be involved in the present matter. This Court holds that the matter cannot be dismissed for laches.

33) The aforesaid circumstances show that there was apparent malice. In such a case much more amount could have been given as compensation to the petitioners

considering their occupation. However, the petitioners have claimed total compensation of Rs. Five lakh. This Court holds that such amount needs to be given by way of compensation to all the petitioners together. In the result, following order. This Court holds that there is no need to make order in respect of the Judicial Magistrate.

34) The petition is allowed. Respondents are hereby directed to pay total compensation of Rs.5 lakh (Rupees Five Lakh) to the petitioners within 45 days from today. If the amount is not paid within 45 days the amount shall carry interest at the rate of 8% per annum from the expiry of the said period. It will be open to respondent No.1 to recover the said amount from respondent No.2 after following necessary procedure. Rule made absolute in those terms.

35) The learned Additional Public Prosecutor prays for stay to the operation of this order. As already time of 45 days is given by this Court, there is no need of giving stay to the order.

(K.K. SONAWANE, J.)
rsl

(T.V. NALAWADE, J.)