

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 1778 OF 2018

Vachhalabai W/o Bharat Shinde,
Aged: 29 years, Occ: Household,
R/o Kausandi Road, M.S.E.B. Colony,
Bori, Tq. Jintur, Dist. Parbhani.

... **PETITIONER**

VERSUS

1. The State of Maharashtra,
Through the Secretary to the
Government of Maharashtra
in Home Department,
Mantralaya, Fort, Mumbai-32.
2. The Superintendent of Police,
Parbhani.
3. The Police Inspector,
Bori Police Station, Parbhani.
4. The State of Karnataka,
Through the Secretary to the
Government of Karnataka in
Home Department, Mantralaya,
Bangalore.
5. The Superintendent of Police,
Bidar, Dist. Bidar.
6. The Police Inspector,
Bhalki (Rural) Police Station,
Tq. Bhalki, Dist. Bidar.

7 Lakhan s/o Ramappa Masaguppi, [Amended as per Court
Age: 36 yrs, Occu: CPI Through the order dated 28.08.19.]
Superintendent of Police, Bidar,
Dist. Bidar, Karnataka. ... **RESPONDENTS**

...
Mr. Shirish M. Kamble, Advocate for Petitioner.
Mr. M. M. Nerlikar, APP for Respondent Nos.1 to 6.
...

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

DATE : 17th October, 2019.

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

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

2 The proceeding is filed under Article 226 of the Constitution of India for relief of compensation of Rs.5,00,000/-. It is the contention of the Petitioner, who is wife of the person, who was allegedly detained by police from 14th October, 2018 to 24th October, 2018 that her husband was illegally detained by Police of Karnataka

and third degree torture was also given to him.

3 The Petitioner and her husband are residents of Jintur Taluka, Parbhani District. They have two sons and one daughter. It is the contention of the Petitioner that her husband namely Bharat Shinde is the only breadwinner of the family and he was making earning by cultivating the land. They are from Pardhi community (Denotified Tribe). It is the contention of the Petitioner that on 14th October, 2018 she and her husband had gone to the Railway Station, Parbhani to drop a guest in a four wheeler of her husband bearing registration No.MH-22-U-5955. It is her contention that Karnataka Police came there and took her husband in their custody without informing any reason for the arrest of the husband. It is contended that on that day, the husband was having on his person gold ornaments weighing 48 grams and cash amount of Rs.90,000/-. It is contended that all these articles were taken over by the Police of Karnataka and they took her husband away with the car of her husband from Railway Station. It is her contention that as she felt that they were probably taking her husband to Bori Police Station, Parbhani she went Bori Police Station but Bori police informed her

that Bhalki Police, Karnataka had taken her husband to Bhalki (Rural) Police Station. It is her contention that as police of Bori Police Station advised her to go to Bhalki (Rural) Police Station, she went to Bhalki (Rural) Police Station on 15th October, 2018, but the Bhalki Police did not supply any information to her. It is contended that she went to the office of District Superintendent of Police, Bidar as Bhalki is situated in Bidar district, but no information was supplied to her by the office of the District Superintendent of Police, Bidar. It is contended that she went to the Court of learned Judicial Magistrate First Class, Bhalki to collect information and there she realized that her husband was not produced in the Court of Judicial Magistrate First Class, Bhalki by police. It is contended that she returned to Parbhani on 16th October, 2018 and again went to Bori Police Station on that day.

4 It is the case of the Petitioner that she attempted to give report to Bori Police about the aforesaid incident, but her report was not accepted. It is her contention that her husband was illegally detained by Bhalki Police and so she made complaint to National Human Rights Commission against the Respondents on 22nd October, 2018. The Respondents are Karnataka Police and Maharashtra

Police. It is contended that Human Rights Commission also did not take cognizance of her complaint.

5 It is the contention of the Petitioner that from 09:00 am of 22nd October, 2018 to 09:00 am of 23rd October, 2018 she was called on cell phone by Police of Karnataka and Karnataka Police demanded money from her for releasing her husband from custody. It is contended that due to these circumstances, she filed Criminal Writ Petition No.1500 of 2018 in this Court for habeas corpus. It is contended that in that proceeding on 1st November, 2018, Bhalki Police filed say and contended that her husband was arrested in Crime No.18 of 2018 by Bhalki Police on 24th October, 2018. It is contended that when her husband was taken in custody by Bhalki Police on 14th October, 2018, false contention was made in the criminal writ petition filed in this Court by Bhalki Police that her husband was taken in custody on 24th October, 2018.

6 It is the contention of Petitioner that as per her information, on 24th October, 2018, application was moved by her husband for medical examination before the Judicial Magistrate First

Class, Bhalki but that was rejected by the Judicial Magistrate First Class, Bhalki and at no time medical examination of her husband was done. It is contended that the bail application filed by her husband was rejected by the Judicial Magistrate First Class and then by Sessions Court. It is contended that from 4th December, 2018, her husband was kept in judicial custody and so the habeas corpus petition filed by her in this Court came to be disposed of.

7 It is the contention of the Petitioner that her husband was subjected to torture by Bhalki Police and amount of Rs.1,09,000/- was collected by Bhalki Police by using ATM card of her husband during the period from 21st October, 2018 to 24th October, 2018 and the circumstances also show that the acts of Karnataka Police were totally illegal. It is her contention that it was illegal arrest and illegal detention and the procedure given by the Honourable Apex Court in the case of **D. K. Basu Vs. State of W.B.**, reported in **AIR 1997 Supreme Court 610** was not followed. By making these contentions she has prayed for compensation of Rs.5,00,000/-.

8 During the pendency of the present proceeding, Bharat

Shinde filed affidavit in this proceeding on 2nd July, 2019. He has made similar contentions in respect of the acts of Karnataka Police that he was picked up from Railway Station of Parbhani on 14th October, 2018. He has contended that at the relevant time, he was having gold ornaments weighing 48 grams, cash amount of Rs.90,000/- and ATM card with him and all those articles were taken over by the police on 14th October, 2018 itself. It is his contention that on 15th October, 2018 he was severely assaulted by Bhalki Police in Bhalki Police Station and he was kept in lock-up in Bhalki Police Station till 16th October, 2018. According to him, on 16th October, 2018, he was taken to Dhanora Police Station, Tahsil Bhalki and from there in the evening time he was again taken back to Bhalki Police Station. It is his contention that on 17th October, 2018, he was taken to Parbhani Police by Bhalki Police and in Parbhani he was kept in Aishwarya Lodge, Parbhani till 21st October, 2018. It is his contention that on 21st October, 2018, he was taken to Bhalki Police Station and on the way to Bhalki from Parbhani, at Udgir by using his ATM card, Bhalki Police withdrew amount of Rs.40,000/-. It is contended that by separate withdrawals on one day, this amount was withdrawn from his account and then he was kept in Bhalki Police Station till the evening

of 22nd October, 2018.

9 It is the contention of Bharat Shinde that on 22nd October, 2018, he was taken to Parbhani by Bhalki Police and they reached there on 23rd October, 2018. It is contended that on 23rd October, 2018, he was kept in Tulsi Lodge, Parbhani and then he was taken to Nanalpeth Police Station, Parbhani. It is contended that on 23rd October, 2018 Bhalki Police withdrew an amount of Rs.40,000/- by using his ATM card by separate four withdrawals at ATM center from Parbhani.

10 It is the contention of Bharat Shinde that on 23rd October, 2018, he was taken back to Bhalki Police Station and on the way they reached to Ahmedpur on 24th October, 2018. It is contended that at Ahmedpur, Bhalki Police withdrew an amount of Rs.29,000/- by using his ATM card at one ATM Center, Ahmedpur. It is contended that the Police used his ATM card and amount is grabbed by them.

11 It is the contention of Bharat Shinde that on 24th October, 2018, in the evening time, he was produced before the Judicial

Magistrate First Class, Bhalki first time and it was falsely contended that he was arrested on 24th October, 2018. It is contended that he was shown to be involved in 18 crimes registered in different police stations. It is contended that in 14 crimes he was released on bail by Sessions Court, Bidar, in one crime he was released on bail by the Karnataka High Court and in three crimes he was released on bail by the Judicial Magistrate First Class, Bhalki. Thus, it is his contention that he was illegally arrested and his detention from 14th October, 2018 to 24th October, 2018 was illegal and there are further allegations that his valuables and cash, which was with him were taken away and by using his ATM card, the Police have virtually robbed him.

12 Only Bhalki (Rural) Police Station has filed reply in this proceeding. It is the contention of police that on 23rd October, 2018 at 14:00 hours, Bharat Shinde was picked up at Parbhani as he admitted his involvement in Crime No.18 of 2018 of Mehekar Police Station, Karnataka. It is contended that due to this admission, he was taken in custody and information was given to Nanalpeth Police Station, Parbhani by them at 14:30 hours. It is contended that at 15:30 hours,

Bharat was shifted from Parbhani to Bhalki Police Station. It is contended that Bharat was first produced before the Bhalki Circle Inspector at 23:30 hours on 23rd October, 2018 and then his formal arrest was shown at 01:30 pm on 24th October, 2018. It is contended that Bharat was formally arrested for the offences punishable under Sections 380 and 457 of the Indian Penal Code. It is contended that after the formal arrest, information was supplied to the wife of the Accused on mobile phone No.77749812165. It is contended that on 24th October, 2018, Accused (Bharat) was produced before the Judicial Magistrate First Class, Bhalki by them and from time to time police custody was granted till 29th October, 2018. It is contended that during the interrogation, Accused admitted his involvement in 28 similar crimes. It is contended that on the basis of statement given by Bharat under Section 27 of the Evidence Act, 330 grams of gold, cash of Rs.45,000/- and a car bearing registration No.MH-22-U-5955 were traced and seized on 29th October, 2018. It is contended that Accused (Bharat) was remanded to judicial custody on 29th October, 2018. Thus, the Bhalki Police have denied that they had arrested Bharat on 14th October, 2018 and the cash amount and ornaments were grabbed by them as alleged by Bharat and his wife. They have

also denied that Bharat was tortured by them.

13 The contents of the petition are supported by the affidavit of wife of Bharat and the contentions of Bharat are also supported by his affidavit. A copy of complaint sent to National Human Rights Commission dated 22nd October, 2018 by the Petitioner is produced on record. The incident dated 14th October, 2018 was mentioned in this complaint dated 22nd October, 2018. Even in the applications given for bail in the Court of learned Judicial Magistrate First Class, Bhalki and Sessions Court, Bidar, contention was made that Bharat was taken in custody by Bhalki Police on 14th October, 2018. A copy of account statement of the account of Bharat opened in State Bank of India, Bori is on record showing the account number as “312167000203”. The entries made in the account from 21st October, 2018 to 24th October, 2018 show that by using ATM card amounts were withdrawn on 21st October, 2018 on four occasions in Udgir as contended by Bharat. Amounts were withdrawn on four occasions probably in Parbhani and amounts were withdrawn on two occasions on 24th October, 2018 at Ahmedpur. Thus, total amount of Rs.1,09,188/- was withdrawn at the three places like Udgir, Ahmedpur

and Parbhani from 21st October, 2018 to 24th October, 2018. This is very serious allegation and if it proves be true, it can have serious implication against the police of Karnataka and also Maharashtra. If these allegations of Petitioner and her husband that Bharat was taken in custody on 14th October, 2018 is proved to be true then it will also be serious and actionable thing against the police of Parbhani (Maharashtra) as it will show that Maharashtra Police had helped Karnataka Police for creation of false record.

14 There is some record in support of serious allegations of robbing him made by Bharat and his wife against the Police and there is substance in those allegations. This Court is not touching those allegations at present and this Court is keeping aside those allegations for separate inquiry. This Court holds that the matter of illegal arrest and illegal detention can be decided on the basis of legal points and for that even the contentions made by the Karnataka Police and Maharashtra Police of aforesaid nature can be accepted as true. In that case, it is necessary to decide as to whether arrest and detention was illegal or legal. This is due to the circumstance that the Karnataka Police have contended that on 23rd October, 2018

Bharat was picked up from Parbhani and he was produced before the Judicial Magistrate First Class, Bhalki on the next day. There is no arrest memo and there is no record of communication of taking in custody Bharat in Maharashtra by Karnataka Police to the relatives of Bharat when admittedly they had information regarding his relatives living in Parbhani district. Bharat was not produced before the Judicial Magistrate First Class / Chief Judicial Magistrate of Parbhani and he was taken to Karnataka from Maharashtra State, to the distance of 200 kilometers from the place where he was picked up and at present there is no relevant record to show that the procedure, which ought to have been followed after taking Bharat in custody in Parbhani was in fact followed. The reply of Karnataka Police itself shows that Bharat was interrogated by them in Parbhani. He was arrested without warrant and so the main matter can be decided on the basis of only law points.

15 The submissions made and contentions made in the petition by the wife of Bharat and the contentions of Bharat made in his affidavit make out the case of following nature.

- i) The arrest of Bharat on 14th October, 2018 in Parbhani was itself illegal and from 14th October, 2018 to 23rd October, 2018 as Bharat was not produced before any Magistrate and he was detained by Karnataka Police without authorization from the Magistrate, his detention was illegal; and
- ii) From Maharashtra, Karnataka Police took Bharat to Karnataka without following the procedure laid down in law, by not taking him before the “nearest magistrate” from the place of arrest and so the act was against the fundamental rights of Bharat and also the safeguards given to see that the fundamental right of liberty is protected.

16 On the other hand, the learned APP for Respondents submitted as follows:

- i) Under the law, Police can keep any such accused in custody for 24 hours for the purpose of investigation and during this period if the accused is produced before the Judicial Magistrate First Class as provided in Section 57 of the Code of Criminal Procedure (hereinafter referred to as the “Cr.P.C.”), the detention cannot

be called as illegal.

- ii) If the detention was unauthorized but subsequently it was authorized by the Magistrate, the previous illegal detention becomes legal; and
- iii) This Court is not having jurisdiction over the matter as the Karnataka Police had taken the Accused in custody and as during the period mentioned in the petition, he was kept in Karnataka. (Here only it needs to be mentioned that there are specific allegations of Bharat that he was taken back to Maharashtra from Karnataka atleast on two occasions and he was illegally detained in Maharashtra also).

17 In view of the aforesaid rival contentions and the points raised, the procedure, which needs to be followed by Police to get authorization for detention of such Accused needs to be ascertained from the provisions of the Constitution of India and the laws made for giving safeguards for protection of right of liberty given under Article 21 of the Constitution of India. It is admitted that Bharat was not produced before the Magistrate from Maharashtra and he was taken to a distance of 200 kilometers from Maharashtra after taking him in

custody in Maharashtra and he was produced before the Judicial Magistrate First Class, Bhalki first time on 24th October, 2018. The time of production will also be relevant, but for the present purpose that need not be considered in view of other mandatory provisions.

18 Freedom or personal liberty is restricted by arrest and detention. Articles 21 and 22 of the Constitution of India are there to recognize liberty as fundamental right and to give safeguards for protection of that right. For the present purpose, Articles 21, 22(1) and 22(2) of the Constitution of India are relevant and they are as under:

“21. Protection of life and personal liberty.— No person shall be deprived of his life or personal liberty except according to procedure established by law.

22. Protection against arrest and detention in certain cases.— (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate

within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.”

19 Article 21 of the Constitution of India shows that the procedure established by law needs to be followed strictly by Police effecting arrest and detaining a person. Article 22(1) and 22(2) of the Constitution of India give safeguards against arbitrary arrest and detention and while making law, the limitations and conditions put by Article 22 need to be kept in mind by the Legislature.

20 Various rights are mentioned in Article 22(1) and 22(2) of the Constitution of India and they are (i) right to be informed of the grounds of arrest as soon as possible, (ii) right to consult and right to be defended by a legal practitioner of the choice of person taken in custody by police, and (iii) right of getting produced before the nearest Magistrate within twenty-four hours of arrest. (underline added)

21 Law is well settled on first and second right mentioned

above. They impose corresponding duty on the officers effecting arrest. After landmark decision of the Apex Court in the case of *D. K. Basu* (supra), the Criminal Procedure Code came to be amended and some of the directions given by the Supreme Court in the case of *D. K. Basu* (supra) came to be included in Criminal Procedure Code. Whatever provisions are made in the Code of Criminal Procedure after amendment are apparently in consonance with the aforesaid mandate of Constitution. In the present matter, the term “nearest magistrate” given in Article 22(2) of the Constitution of India needs to be interpreted. The meaning of this term is not given in the Code of Criminal Procedure and the learned APP submitted that the meaning is not given even by the Apex Court of this term in any case. It appears that in the case reported as **1985 (Supp) Supreme Court Cases 607**, (*Rajinder Prasad Aggarwal Vs. Chief Metropolitan Magistrate and others*) the Apex Court could have given the meaning of this term, but as the purpose of that proceeding was served, the Apex Court did not go further, to give the meaning of this term. In the present matter, in view of the nature of the relief claimed and aforesaid circumstances, it has become necessary to ascertain the meaning of this term.

22 In the present matter, the provisions of Cr.P.C. ought to have been followed by police. Before considering the provisions of Cr.P.C., it is necessary to keep in mind that the Court can depart from literal interpretation so that the provision becomes constitutional if literal interpretation makes the provision unconstitutional. On this point, the case reported as **(2011) 3 Supreme Court Cases 380**, (*Indra Das Vs. State of Assam*) can be referred.

23 To ascertain the object behind having the term “nearest magistrate” in aforesaid Article of Constitution, intention of the Constituent Assembly need to be seen. The intention can be ascertained from the discussion, which took place in Constituent Assembly for having such provision in Constitution.

24 The relevant portions of the response given by Dr.Ambedkar, who headed the Drafting Committee, to the suggestions made and amendments suggested by Members of the Constituent Assembly need to be quoted. For having provisions like Article 22(1) and 22(2) in the Constitution, in response, Dr. Ambedkar

gave the following explanations:

“Now turning to clause (1) of article 15-A, I think there were three suggestions made. One is with regard to the words "as soon as may be". There are amendments suggested by Members that these words should be deleted and in place of those Words "fifteen days" and in some places "seven days" are suggested. In my judgment, these amendments show a complete misunderstanding of what the words "as soon as may be" mean in the context in which they are used. These words are integrally connected with, clause (2) and they cannot, in my judgment, be read otherwise than by reference to the provisions contained in clause (2), which definitely say that no man arrested shall be detained in custody for more than 24 hours unless at the end of the 24 hours the police officer who arrests and detains him obtains an authority from the magistrate. That is how the section has to be read. Now it is obvious that if the police officer is required to obtain a judicial authority from a magistrate for the continued arrest of a person after 24 hours, it goes without saying that he shall have at least to inform the magistrate of the charge under which that man has been arrested, which means that "as soon as" cannot extend beyond 24 hours. Therefore all those amendments which suggest fifteen days or seven days are amendments which really curtail the liberty of the individual. Therefore I think those amendments are entirely misplaced and are not wanted.

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Now, Sir, I come to clause (2). The principal point is that

raised by my Friend Mr. Pataskar. So far as I was able to understand, he wanted to replace the word "Magistrate" by the words "First class Magistrate". Well, I find some difficulty in accepting the words suggested by him for two reasons. We have in clause (2) used very important words, namely, "the nearest Magistrate" and I thought that was very necessary because otherwise it would enable a police officer to keep a man in custody for a longer period on the ground that a particular Magistrate to whom he wanted to take the accused, or the Magistrate who would be ultimately entitled to try the accused, was living at a distance far away and therefore he had a justifiable ground for detaining him for the longer period. In order to take away any such argument, we had used the words "the nearest Magistrate". Now supposing, we were to add the words "the nearest First Class Magistrate": the position would be very difficult. There may be "the nearest Magistrate" who should be approached by the police in the interests of the accused himself in order that his case may be judicially considered. But he may not be a First Class Magistrate. Therefore, we have really to take a choice : whether we shall give the accused the earliest opportunity to have his matter decided and looked into by the Magistrate near about, or Whether we should go in search of a First Class Magistrate. I think "the nearest Magistrate" is the best provision in the interests of the liberty of the accused. I might also point out to my Friend, Mr. Pataskar, that even if I were to accept his amendment- "the nearest First Class Magistrate" it would be perfectly possible for the Government of the day to amend the Criminal Procedure

Code to confer the powers of a First Class Magistrate on any Magistrate whom they want and thereby cheat the accused. I do not think therefore that his amendment is either desirable or necessary and I cannot accept it.”

25 The discussion, which took place in the Constituent Assembly shows that few Members had suggested to use the term Judicial Magistrate First Class, few Members had suggested to fix period in Article 22(2) of the Constitution as beyond 24 hours and had suggested specific period of fifteen days or seven days. All these suggestions were negatived and the Article in the present form was accepted by the Constituent Assembly.

26 The aforesaid reasons given to have the Article in the present form show that no scope is left to police to keep arrested person in their custody for the purpose of investigation for more than 24 hours excluding the time required for taking the accused from the place of arrest to the Court of Magistrate. Only to ensure such observance, mandate, the term “nearest magistrate” is used and specific period is also given. The period of 24 hours is given in relation to the term “nearest magistrate” and it cannot be read

separate from this term. Further, as per the aforesaid reasoning given, “nearest magistrate” cannot be presumed as the Magistrate having jurisdiction over the crime, in which the accused is arrested. Further, right to inform the Magistrate of the charge under which that man is arrested given in this Article shows that it was intention to see that the Magistrate within whose territorial jurisdiction the man is arrested is expected to be informed about such arrest and such Magistrate is expected to exercise the power, which can be like bail, remand etc. No other interpretation of the aforesaid obligation, to inform to the Magistrate about the arrest mentioned by Dr. Ambedkar is possible. In view of this object behind using the term “nearest” the subsequent reference of terms like “Court of Magistrate” and “Magistrate” in Article 22(2) can have the same object. So, the subsequent terms used as “Court of Magistrate” and “Magistrate” means that “nearest magistrate” mentioned in the Article. If the purpose behind Article 22(2) of Constituent Assembly is kept in mind, only the aforesaid meaning can be given to the term “nearest magistrate”.

the procedure for arrest and detention. It needs to be mentioned again that in landmark decision of *D. K. Basu* (supra), the Apex Court has given the procedure, which is expected to be followed by the police for compliance of the mandate of aforesaid Article of the Constitution. The Apex Court has laid down many guidelines, directions and for the present purpose, the directions having Nos.2, 3, 4, 6, 7, 8 and 9 of the case *D. K. Basu* (supra) are relevant. The Apex Court has further made it clear that the requirements of Articles 21 and 22(1) of the Constitution need to be strictly followed. It is also made clear that the requirements given by the Apex Court are to be in addition to the Constitutional and statutory safeguards and various directions already given by the Courts from time to time.

28 The present matter involves “arrest without warrant”. In Chapter V of Cr.P.C., there are provisions with regard to arrest and procedure of arrest. For the present purpose, the relevant provisions are Sections 41, 41-B, 41-C, 41-D, 46, 48, 50, 50-A, 51, 54, 55, 56, 57, 58 and 60-A.

29 The sum and substance of the aforesaid provisions is that

any police officer has a power to arrest any person without warrant against whom there is reliable information etc. of commission of cognizable crime. There is division of the crimes like crimes punishable with imprisonment upto seven years and for that conditions laid in Section 41 of Cr.P.C. need to be satisfied. For making such arrest, reasons are required to be recorded in writing. The provision of Section 48 of Cr.P.C. shows that it is possible to pursue offender into other jurisdiction. The provision of Section 55 of Cr.P.C. shows that the police officer in charge of a police station or any police officer making an investigation under Chapter XII can require subordinate police officer to arrest without warrant any person who may lawfully be arrested without warrant. In that case, requirement of Section 55 of Cr.P.C. needs to be complied with by that subordinate police officer like informing about the order made by the superior officer and if required show such order to that person. In the present matter, the police officer of Karnataka had come to Maharashtra to arrest the husband of Petitioner and so the aforesaid provisions are relevant.

to be considered together. Section 41 gives the procedure to arrest the person without warrant for the purpose of investigation of an offence provided the conditions mentioned in Section 41 are satisfied. Section 41-B of Cr.P.C. shows the precautions, which need to be taken during the procedure of arrest. This provision shows that it is mandatory to prepare memorandum of arrest, which shall be attested atleast by one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made. The arrest memo needs to be countersigned by the person arrested. This provision also shows that if such memorandum is not attested by a member of family of accused then it needs to be informed to the accused that he has right to have a relative or a friend named by him to be informed of his arrest. In the present matter, the submissions made show that there was no compliance at all of the provision of Section 41-B of Cr.P.C. in Parbhani. No arrest memo at all was prepared.

31 In the present matter, the police had come from Karnataka to Maharashtra in search of husband of Petitioner. In view of the factual aspects of the matter that the interrogation is shown to

be made in Maharashtra itself, it was necessary for Karnataka police to create record of arrest in Maharashtra. Such record was not created and the reply affidavit shows that only on the next day the record of formal arrest was created in Karnataka and attempt is made to show that from the time mentioned in that arrest form prepared in Karnataka, the period of 24 hours is counted by Karnataka police. The provision of Section 51 of Cr.P.C gives another check to atrocities of police and it shows that when a person is arrested without warrant and he cannot legally be admitted to bail, search of that person needs to be taken at the time of arrest, list of articles found on the person of accused need to be prepared and list of articles, which are seized by police need to be given to the person arrested. This procedure also was not followed in Parbhani and this circumstance is relevant as there are serious allegations against the police that they have virtually robbed the accused of valuables like gold ornaments and cash amount, which was on the person of accused. It does not look probable that accused was not having any article at all with him at the time when he was taken in custody in Parbhani.

in the year 2009 and it shows that when any person is arrested, he shall be examined by medical officer mentioned in this Section and record of examination needs to be created by such medical officer. Copy of such record is required to be supplied to the arrested person or the person nominated by such arrested person. The record available shows that at no time, accused was produced before the medical officer. Even when on second occasion he was produced before the Judicial Magistrate First Class, Bhalki and he had requested for medical examination, that was not allowed even by the Judicial Magistrate First Class, Bhalki. These are serious lapses.

33 The provision of Section 41-C of Cr.P.C. is also important for protecting the fundamental rights of arrested person. This Section shows that the Government is expected to establish a police control room in every District and even at State level and information with regard to the persons arrested and the officers involving arrest of the persons need to be displayed on notice board by the control room. This information is not only for the relatives, but also for the general public. In the matter like present one, steps need to be taken to ascertain as to whether atleast Maharashtra police had followed this

procedure, but that needs to be done in separate proceeding. There is clear probability that there was no such compliance in view of the contention made by Karnataka Police.

34 The provision of Section 41-D of Cr.P.C. is also relevant and it shows that when any person is arrested and interrogated by the police, the said person shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation. When in reply affidavit itself it is mentioned that in Maharashtra itself, accused was interrogated and he admitted his involvement in the offence, it was necessary for the police to show that opportunity was given to the accused to exercise his right given under Section 41-D of Cr.P.C.. There was no compliance of provision of Section 41-D of Cr.P.C.

35 The provision of Section 50 (1) of Cr.P.C. is also relevant as it is a safeguard and it shows that the police officer, who is effecting arrest is bound to inform the accused full particulars of the offence for which he is arrested and grounds for such arrest. In this regard, record of both Parbhani and Bhalki Police Station is relevant

but such record is not available. The provision of Section 50-A is mandatory provision and it shows that every police officer making arrest must give information regarding such arrest and place where the arrested person is being held to any of the friend of arrested person or relative of that person as may be disclosed or nominated by the arrested person for giving such information. It is the contention of Karnataka police that on 24th October, 2018 such information was given to the wife of the accused. The provision of Section 50-A(2) shows that information about the aforesaid right needs to be given when accused is brought to the police station. Here the term “police station” can have only one meaning and that is the police station having jurisdiction over the place where the accused is arrested. Section 50-A(3) of Cr.P.C. shows that entry of the fact that such information was supplied needs to be made in the register which is to be kept by such police station.

36 The provision of Section 56 of Cr.P.C. shows that the police officer making arrest without warrant must take the arrested person before the Magistrate having jurisdiction in the case, or before the officer in charge of a police station. This provision is applicable

when the person is arrested within the local jurisdiction of the Magistrate having jurisdiction over the offence in which he is arrested and it needs to be read with Sections 57 and 167 of Cr.P.C.. The provision of Section 58 of Cr.P.C. is also important and it runs as under:

“58. Police to report apprehensions.— Officers in charge of police stations shall report to the District Magistrate, or, if he so directs, to the Sub-Divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.”

37 The provision of Section 58 of Cr.P.C. has much relevance with the present matter as it shows that reports of all arrest made within local jurisdiction of the police station are required to be given to the District Magistrate by that police station. In the present matter, to ascertain as to whether mischief as alleged is committed, this Court took steps but there is no such record with the Respondents. The provision of Section 57 of Cr.P.C. has connection with the provision of Section 167 of Cr.P.C. and so, this Court is quoting and considering that provision alongwith the provision of

Section 167 of Cr.P.C.

38 The provisions of portion B of Chapter VI of Cr.P.C. are also relevant in the present matter. They are in respect of execution of warrant of arrest issued by the Court under the Code, but they need to be considered for the present matter to ascertain meaning of the term “nearest Magistrate”. When Magistrate issues warrant of arrest, it needs to be presumed that the Magistrate had considered all the relevant facts of the matter and necessity of issuing such warrant. When there is arrest on the basis of warrant issued by Magistrate, there is some procedure giving safeguards. This Court holds that those safeguards cannot be ignored while ascertaining the meaning of term “nearest magistrate” for present purpose.

39 The provision of Section 71 of Cr.P.C. deals with bailable warrants. The provision of Section 75 of Cr.P.C. shows that the police officer executing warrant of arrest is expected to notify the substance of warrant to the person to be arrested and if so required, the police officer is expected to show the warrant itself to the person to be arrested.

40 The provision of Section 76 of Cr.P.C. relates to execution of warrant within the local jurisdiction of Magistrate, which has issued the warrant. The difference in the provisions of Sections 76, 78, 79 and 80 can be gathered if they are considered together. This Court has no hesitation to observe that the provision of Section 76 of Cr.P.C. relates only to execution of warrant within the jurisdiction of Magistrate, which has issued the warrant. This provision also shows that the period of 24 hours is mentioned and time necessary for the journey from the place of arrest to the Magistrate's Court will be excluded for calculating the period of 24 hours given to police. It needs to be kept in mind that in the past there were no Judicial Magistrates First Class appointed in every Tahsil. In the States like Maharashtra, steps were taken to create Courts of Judicial Magistrate First Class in every Tahsil in the year 2006, but after many years from the year 2006, the Courts of Judicial Magistrate First Class were established in every Tahsil in Maharashtra. Prior to that, there was one Magistrate for two Tahsils or three Tahsils. In hilly area, the period of travel taken is much higher than the period taken in plateau area. This circumstance must have been considered for excluding the

period required for travel upto the Court of Magistrate. Even in these days, in hilly areas when there is heavy rain, the period of travel is much higher and so such concession is there. That concession does not mean that it is a power given to police to keep the person in their custody for 24 hours after the arrest.

41 The provision of Section 78 of Cr.P.C. shows that when warrant is to be executed outside the local jurisdiction of the Court issuing it, the Court may instead of directing the police officer working within his jurisdiction, forward the warrant by post or otherwise to the Magistrate of the area or police officer of the rank of Superintendent of Police of the area where the warrant is to be executed and such police officer or Magistrate is expected to endorse the warrant and see that such warrant is executed within his local jurisdiction. The provision of Section 78(2) of Cr.P.C. is important in this regard and it runs as under:

“78. Warrant forwarded for execution outside jurisdiction.—

(1)

(2) The Court issuing a warrant under sub-section (1) shall forward, alongwith the warrant, the

substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under section 81 to decide whether bail should or should not be granted to the person.”

This provision is important as it has reference to the provision of Section 81 of Cr.P.C., which is being considered separately.

42 The provision of Section 79 of Cr.P.C. is specifically in respect of execution of warrant of arrest issued by Court beyond the local jurisdiction of the Court issuing the warrant. Provision of Section 79 of Cr.P.C. runs as under:

“79. Warrant directed to police officer for execution outside jurisdiction. – (1) When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is

directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it.”

43 The provision of Section 79 of Cr.P.C. shows that without informing the local police, even warrant of arrest issued by a Court cannot be executed. This provision needs to be read with the previous provisions of Chapter V already quoted and it shows that the arrest is not a secret matter for anybody.

44 The provision of Section 80 of Cr.P.C. is also important for the present purpose and it runs as under:

“80. Procedure on arrest of person against whom warrant issued.— When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within thirty kilometres of the place of arrest or is nearer than the Executive Magistrate or District

Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 71, be taken before such Magistrate or District Superintendent or Commissioner.”

This provision shows that only when the Court, which has issued warrant is nearer than the Executive Magistrate or District Superintendent of Police, it is permissible to take the arrested person before the Magistrate, who has issued the warrant. This Section again shows that the Legislature was aware of the fact that the person is required to be produced after his arrest before the nearest Magistrate and that is why such specific provision is made.

45 The provision of Section 81 of Cr.P.C. is also relevant for the present purpose and it runs as under:

“81. Procedure by Magistrate before whom such person arrested is brought. – (1) The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 71 on the warrant and such person is ready and willing to give the security required by such directions, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond, to the Court which issued the warrant:

Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of section 437), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub-section (2) of section 78, to release such person on bail.

(2) Nothing in this section shall be deemed to prevent a police officer from taking security under section 71.”

Second proviso to Section 81 of Cr.P.C. is very important as it provides that Chief Judicial Magistrate and Sessions Judge of the District where the arrest is made under warrant has power to consider the application, which can be made for bail, on the basis of information and documents referred to in sub-Section (2) of Section 78 of Cr.P.C..

46 The provision of Section 101 of Cr.P.C. from Chapter VII also shows that the Magistrate having jurisdiction over the place from which the articles are seized by police needs to be informed about the seizure and such Magistrate can direct such articles be taken before the concerned Magistrate. This Section is consistent with the proposition that the Magistrate having jurisdiction over the area where the arrest or seizure takes place need to be informed about the arrest and seizure and further orders of such Magistrate need to be obtained.

47 Chapter XII of Cr.P.C. contains important provisions with regard to powers of police to investigate. Section 157 (1)(a) of Cr.P.C. shows the power of in charge of police station and it shows that the officer in charge of police station may depute subordinate officer to make an investigation on the spot. Section 165(3) of Cr.P.C. shows that when the officer in charge of the police station is unable to conduct the search in person and there is no other person competent to make the search present at the time, he may require after recording the reasons for doing so officer subordinate to him to make the search. Section 166 of Cr.P.C. shows that if any article is seized as

provided under Section 165 of Cr.P.C. and when another police officer of different district is making such search and has seized some articles, he needs to send copy of list, if any, prepared under Section 100 of Cr.P.C. to the nearest Magistrate empowered to take cognizance of the offence and copies of the records referred to in sub-Sections (1) and (3) of Section 165 also need to be forwarded to the nearest Magistrate who is empowered to take cognizance of the offence. Thus, when the stolen property is recovered, the Magistrate, who is having jurisdiction over the area from where the stolen property is recovered, needs to be informed about such seizure. The police station, which has local jurisdiction over such place is also expected to keep the record of such seizure.

48 It is already observed that the provision of Section 57 of Cr.P.C. needs to be read together with the provisions of Section 167 of Cr.P.C.. Provision of Section 57 of Cr.P.C. reads as under:

“57. Person arrested not to be detained more than twenty-four hours.— No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a

special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate' s Court.”

49 The relevant portions of the provision of Section 167 of Cr.P.C. are Section 167(1), 167(2), 167(2)(b), 167(2)(c) with explanation II, 167 (2-A) with proviso, 167(3) and 167(4) and they read as under:

“167. Procedure when investigation cannot be completed in twenty-four hours. – (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days

in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-

(a)

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.—

Explanation II.— If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

.....

(2-A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation,

if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and there upon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.”

50 The provision of Section 168 of Cr.P.C. is also important as the officer in charge of police station had not come to Maharashtra and it runs as under:

“168. Report of investigation by subordinate police officer.— When any subordinate police officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police station.”

51 The provision of Section 167 quoted above has made it clear that the nearest Magistrate means the Magistrate, who is nearest to the place of arrest. If the nearest Magistrate has jurisdiction to try the offence then there will be no problem, but the problem arises when the nearest Magistrate has no jurisdiction to try

the offence. The Section is clear and it shows that whether the nearest Magistrate has power to try the offence or not, the accused needs to be produced before such nearest Magistrate. The period of authorized detention by police of fifteen days mentioned in Section 167 of Cr.P.C. starts from the date of order made by the Magistrate. So, the Magistrate, who is not having jurisdiction to try the offence, but before whom the accused is produced, is expected to direct production of such accused before the Magistrate having jurisdiction over the offence and only for that period such Magistrate will be authorising detention of the accused by police. The provision of Section 167(2)(b) of Cr.P.C. also shows that actual production of accused before such Magistrate for the first time is compulsory. Only the subsequent detention can be authorized through the medium of electronic video linkage. It is already observed that as per the provisions of Chapter VI and particularly Section 81 of Cr.P.C., the person arrested under warrant is required to be produced before the Executive Magistrate, having jurisdiction over the place where the arrest was made and the Chief Judicial Magistrate or the Sessions Judge has the power to decide the bail application filed by the accused arrested under warrant. A person who is arrested without

warrant cannot be treated differently. When warrant of arrest is issued by the Magistrate, he applies the mind to the facts of the matter before issuing the warrant and in that case also, the accused arrested under warrant has a right of aforesaid nature and his bail application also needs to be considered by the Chief Judicial Magistrate under Section 81 of Cr.P.C.. In view of these circumstances, it is not possible to infer that a person arrested without warrant need not be produced before the nearest Magistrate. The difference between Sections 81 and 167 of Cr.P.C. is that the nearest Magistrate (Judicial Magistrate, when available) can order the accused to be forwarded to a Magistrate having jurisdiction and for period required to produce, this Magistrate may authorise the detention.

52 The provision of Section 167(2-A) of Cr.P.C. already quoted shows that no excuse is available to the police officer arresting the accused like nearest Judicial Magistrate was not available. In that case also, as per this provision, the accused needs to be transmitted to the nearest Executive Magistrate on whom powers are conferred of Judicial Magistrate. In that case also, some record is required to be

prepared by the police officer under this Section. This provision shows that no scope is left to police to say that they could have produced such arrested accused before the concerned Magistrate, the Magistrate having jurisdiction over the offence within 24 hours from the time of arrest and so, the accused was taken before the concerned Magistrate. In view of the aforesaid provisions, the interpretation suggested for the Respondents by the learned APP is not at all acceptable.

53 The aforesaid provisions are safeguards for protection of fundamental rights mentioned in Article 21 of the Constitution of India. They need to be strictly followed by the officers effecting arrest. If there is a material to infer that there was actual arrest, but after the arrest the accused was not taken before the nearest Magistrate and he was taken far away from that place for production before the concerned Magistrate, the moment the accused is taken out of the jurisdiction of nearest Magistrate, his detention becomes unauthorized and illegal. Such detention will not become legal only because subsequently the accused is produced before the Magistrate having jurisdiction to try or inquire into the offence within 24 hours of the

actual arrest. Here only it needs to be mentioned that the contention of police that formal arrest was made after taking the accused to the local jurisdiction of the concerned Magistrate and the period needs to be counted from that time and the case needs to be considered from that angle cannot be accepted. There are other provisions in Cr.P.C. like issuing notice or summons for making inquiry and by that process calling a person to the police station is possible. If that procedure is not followed and accused is picked up from a place over which the police station has no jurisdiction and he is taken to the place over which the police has jurisdiction, inference become easy that the accused was taken away from the first place only by illegally detaining him. If such interpretation is not made then the aforesaid provisions mentioned like Section 41-B, 41-C and all subsequent provisions will become otiose and that will be against all the provisions made to safeguard the fundamental rights of such person.

54 The learned APP placed reliance on the case reported as **2012 (9) SCC 729**, (*Subhashree Das @ Milli Vs. State of Orissa & Ors.*). In that case, the place of arrest was shown as Bhubaneswar and the accused was produced before the concerned Magistrate, who

was working at Banapur. Within three hours from the time of arrest he was produced before Banapur Magistrate in the same State. The point like he was not produced before the nearest Magistrate and there was no compliance of aforesaid provisions of Cr.P.C. was not raised. There was dispute only in respect of time of arrest and an attempt was made by the accused to show that she was not produced before the concerned Magistrate within 24 hours from the time of arrest. No other point was raised in that matter. The aforesaid provisions of Cr.P.C. and the Constitution of India were not required to be considered in view of the points raised by the accused.

55 The facts of the case reported as **(1999) 3 Supreme Court Cases 715**, (*Manoj Vs. State of M.P.*) show that a person was arrested by Kota Police of Rajasthan on 22nd June, 1998. He was then shown to be arrested in connection with the case registered in Madhya Pradesh on 7th August, 1998. Bail was granted to him in a case registered in Rajasthan. In a proceeding filed to challenge the arrest made by Madhya Pradesh police, a point was raised that he was never produced before the Court after his formal arrest. He was arrested on the basis of production warrant issued by the Court of

Madhya Pradesh, but he was not produced before that Court. The Apex Court considered the provisions of Sections 167(1) and 57 of Cr.P.C. The relevant observations are in paragraphs 9 to 14 and they are as under:

“9. Here the prayer for bail is opposed on the ground that detention is without such authorisation. Can the benefit of bail be denied on such a ground? Section 167(1) of the Code is relevant in this context as it enjoins on the police officer concerned a legal obligation to forward the arrested accused to the nearest Magistrate. That sub-section reads thus.

"167. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate."

10. The police officer who conducts investigation

cannot obviate the legal obligation to perform two requisites if he knows that investigation cannot be completed within 24 hours after arrest of the accused. One requisite is, to transmit a copy of the case-diary to the nearest Judicial Magistrate. The other is, to forward the accused to such Magistrate simultaneously. The only exceptional ground on which the police officer can avoid producing the arrested person before such Magistrate is when the officer concerned is satisfied that there are no grounds for believing that the information or accusation was well founded. In such a case, the accused must be released from custody to which he was interred pursuant to the arrest.

11. In this context Section 57 of the Code is also relevant and hence it is extracted below :

"57. Person arrested not to be detained more than twenty-four hours.— No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under Section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court."

12. If the police officer is forbidden from keeping an arrested person beyond twenty-four hours without order

of a Magistrate, what should happen to the arrested person after the said period? It is a constitutional mandate that no person shall be deprived of his liberty except in accordance with the procedure established in law. Close to its heels the Constitution directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within 24 hours of such arrest. The only time permitted by Article 22 of the Constitution to be excluded from the said period of 24 hours is "the time necessary for going from the place of arrest to the court of the Magistrate". Only under two contingencies can the said direction be obviated. One is when the person arrested is an "enemy alien". Second is when the arrest is under any law for preventive detention. In all other cases the Constitution has prohibited peremptorily that "no such person shall be detained in custody beyond the said period without the authority of a Magistrate".

13. When the State of Madhya Pradesh, whose police made the arrest of the appellant in connection with the M.P. case on 7-8-1998, admitted that after the arrest he was not produced before the nearest Magistrate within 24 hours, its inevitable corollary is that detention made as a sequel to the arrest would become unlawful beyond the said period of 24 hours.

14. Of course the stand of the State of Madhya Pradesh is that appellant continues to be under detention pursuant to his arrest in the Rajasthan case. Excuses were

advanced by the respondent-State for their inability to produce the accused before the nearest Magistrate within the required period. But no such excuse has been recognized by law. Hence the respondent cannot validly press for further detention of the accused beyond 24 hours. That arrest has now become otiose.”

56 The learned APP placed reliance on some observations made by the Apex Court in the case reported as **AIR 1971 Supreme Court 813**, (*Saptawna Vs. The State of Assam*). In view of the facts of that case, the Apex Court held that the subsequent authorization by Magistrate of detention made the previous detention lawful. A civilian was taken in custody by Armed Forces and in view of the facts of that matter and question of application of Cr.P.C. to that detention such observations were made and the facts of the reported case were totally different.

57 On the point of jurisdiction of this Court, the learned APP placed reliance on the observations made by the Apex Court in the case reported as **AIR 1998 Supreme Court 144**, (*State of Assam and another Vs. R. K. Krishna Kumar and others*). The point of jurisdiction to entertain and decide the matters filed under Section 438

of Cr.P.C. was involved in the matter and in that context there are some observations. The point involved in the present matter is altogether different. In the case reported as **(2014) 9 Supreme Court Cases 329**, (*Nawal Kishore Sharma Vs. Union of India and others*), the Apex Court has discussed the jurisdiction of High Court under Article 226 of the Constitution of India and it is laid down that the High Court can issue a writ if cause of action wholly or partially arises within its territorial jurisdiction even if the person or authority against whom writ is issued is located outside its territorial jurisdiction. In the case reported as **AIR 2007 Supreme Court 1812**, (*Alchemist Limited and Anr. Vs. State Bank of Sikkim and Ors*), the Apex Court has discussed the change made by the Constitution (Fifteenth Amendment) Act, 1963 due to which new Clause (1-A) was inserted in Article 226 of the Constitution. That clause is as under:

“(1-A) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”

58 The underlying object was expressed in following words quoted in the case of *Alchemist Limited and Anr. Vs. State Bank of Sikkim and Ors* (supra):

“Under the existing Article 226 of the Constitution, the only High Court which has jurisdiction with respect to the Central Government is the Punjab High Court. This involves considerable hardship to litigants from distant places. It is, therefore, proposed to amend Article 226. So that when any relief is sought against any Government, authority or person for any action taken, the High Court within whose jurisdiction the cause of action arises may also have jurisdiction to issue appropriate directions, orders or writs.”

59 In view of the aforesaid position of law, this Court holds that there is no force in the contentions made by the learned APP that this Court has no jurisdiction over the matter.

60 The learned counsel for Petitioner placed reliance on the decision given by this Court in **Criminal Writ Petition No.216 of 2006** (*Sau. Radha w/o Subhash Maid Vs. The State of Maharashtra*

and others). In this case, on facts the case was decided in favour of Petitioner and order of compensation was made.

61 The discussion of the facts of the present matter shows that even if the contention of Karnataka police that the husband of Petitioner was taken from Maharashtra to Karnataka on 23rd October, 2018 is accepted as it is, due to the circumstances already quoted and the position of law, inference is must that he was illegally detained first in Parbhani on 23rd October, 2018 for some time and then he was illegally detained in Karnataka till the time of his production before the Judicial Magistrate First Class, Bhalki on 24th October, 2018. He was produced there in the noon time. Further, his shifting from Maharashtra to Karnataka by Karnataka police was unauthorized and the provisions already quoted were not followed and due to that, there was a breach of his fundamental rights. This Court, however, holds that the case of the Petitioner that her husband was picked up from Maharashtra on 14th October, 2018 itself and since then he was illegally detained in Karnataka is also probable in nature.

62 The Petitioner and her husband belong to Pardhi community, which is listed in N.T. category. Due to the criminal cases filed against many persons of this community in Maharashtra and the nature of cases in which they are shown to be involved, all the persons of Pardhi community including their children are facing many problems. Due to the bad reputation given to the families by fining many cases against them, it has become difficult to the families of this community to settle at a particular place atleast in Maharashtra. The people of locality where the family of Pardhi community wants to settle, oppose the settlement there with the apprehension that the people may face danger from the people of Pardhi community. In Maharashtra from the year 2006, some schemes were prepared to see that the persons of Pardhi community are rehabilitated and they are allowed to settle at places in Maharashtra. It can be said that the scheme has not achieved the expected success. Even at present, most of the times, when offences like thefts, road robbery and dacoity are committed, the persons of this community are taken in custody only out of suspicion. In most of the cases, they are illegally detained, without creating any record of arrest. In the present matter also, the husband of Petitioner was shown to be involved in as many as 18

cases registered in Karnataka. In all those cases, he is granted bail.

63 Yesterday, the learned APP produced on record affidavit of the police officer, who had taken the husband of Petitioner from Maharashtra to Karnataka. In this affidavit, it is contended that on 23rd October, 2018, the husband of Petitioner was picked up in Parbhani in the noon time and after informing the concerned police station from Parbhani, he was taken to Bhalki where he was shown to be arrested. When in the previous affidavit filed for Karnataka police it was contended that the arrest was shown to be made after 01:00 pm on 24th October, 2018, yesterday, the learned APP produced on record some copies of the so-called entries in the record of police station and submitted that as per the record, he was arrested at 01:00 hour of 24th October, 2018 and time needs to be counted from 01:00 hour of 24th October, 2018 till his time of production, which is 09:00 pm of 24th October, 2018 before the Judicial Magistrate First Class, Bhalki. In the affidavit, more information is supplied that in Telangana as many as 44 crimes were registered against the husband of Petitioner and in Karnataka 28 such offences were registered and he was convicted in 3 crimes in Telangana in the past. Even if, all these contentions are

accepted as they are, in view of the observations made already by this Court on the factual aspects and also on the position of law, there is no other alternative than to hold that no procedure was followed by the officer, which guarantees the protection of fundamental rights and the husband of Petitioner was illegally detained by him as already observed. Thus, the submissions made yesterday cannot change the fate of the matter.

64 Only because a person appears to be involved in many cases, there is suspicion against him of that nature, the police cannot be allowed to deviate from the procedure laid down for arrest and detention, which is already quoted. Such illegal actions of police create more problems for the entire family of the person arrested. To make the police realize that they cannot get absolved from their liability even when they take such action against the persons of Pardhi community, it has become necessary to grant compensation in the present matter. The other part of inquiry, like to fasten the liability departmentally etc., can be left with the concerned departments of the police personnel involved in the matter.

65 In the case of *D. K. Basu Vs. State of W.B.* (supra), the Apex Court has laid down the law in respect of compensation, which can be granted in such cases. In subsequent case, reported as **AIR 1993 Supreme Court 1960**, (*Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*), the Apex Court has laid down that such actions are in blatant violation of human rights. India was party to International Covenant on Civil and Political Rights, 1966 and the resolution passed in that convention is adopted by the India. The Apex Court has referred Article 9(5) of the International Covenant on Civil and Political Rights, 1966 signed in that Convention. Article 21 of the Constitution of India and the powers given to this Court under Article 226 of the Constitution of India make it not only possible but necessary for this Court to grant compensation in such cases.

66 Only due to the circumstance that the husband of Petitioner is shown to be involved in around 18 cases of theft, robbery etc., this Court holds that compensation in the present matter can be nominal and that will be in the recognition of the fundamental rights of the husband of Petitioner. When there is a breach of fundamental right, liability to pay compensation is absolute and so the

Respondents cannot escape from such liability under any ground. In the result, the following order is passed:

ORDER

- I. The petition is allowed.
- II. The Karnataka police (Respondent Nos.4 to 6) are hereby directed to pay compensation of Rs.50,000/- (Rupees Fifty Thousand Only) to the husband of Petitioner.
- III. The amount of compensation is to be deposited in the Court by the aforesaid Respondents within 45 days from the date of this decision.
- IV. If the amount is not deposited within 45 days, the amount shall carry interest at the rate of 8% per annum and the interest will be payable after completion of 45 days given to the aforesaid Respondents to deposit the amount.
- V. Copies of this judgment are to be sent to the concerned departments of both the Governments.
- VI. The employers of the police officers are expected to make necessary inquiry and then take action departmentally.

VII. It will be open to the Karnataka Government to recover the amount of compensation, which is required to be paid in this matter, from the concerned police officers.

VIII. Rule is made absolute in those terms.

[K. K. SONAWANE, J.]

[T. V. NALAWADE, J.]

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