

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 27-09-2021****Pronounced on 30-11-2021****CRMP No. 46 of 2015**

- Breejesh Kumar Singh Wrongly Mentioned As Brajesh Kumar Singh S/o Shri Umakant Singh Aged About 45 Years R/o Vivekanand Nagar Nigan Colony, Near Maharana Pratap Chowk, Bilaspur, Police Station Civil Line, Distt. Bilaspur C.G. , Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through The District Magistrate, Bilaspur C.G.
2. The Station House Officer Police Station Tarbahar, Bilaspur, Distt. Bilaspur C.G.
3. Smt. Saumya Chourisiya The Then Sub Divisional Magistrate Bilaspur, Distt. Bilaspur C.G. Through The Secretary, Department Of Revenue And Disaster Management, Mantralaya, Mahanadi Bhawan, Raipur C.G.
4. Shri G.R. Mahilange The Then Executive Magistrate/additional Tahsildar, Bilaspur C.G. Through The Secretary, Department Of Revenue And Disaster Management, Mantralaya, Mahanadi Bhawan, Raipur C.G.
5. Shri Ashok Kumar Marbal The Then Tahsildar, Bilaspur C.G. Through The Secretary, Department Of Revenue And Disaster Management, Mantralaya, Mahanadi Bhawan, Raipur C.G.
6. Shri K.M.S. Khan The Then Station-In-Charge, Police Station Tarbahar, Bilaspur, Distt. Bilaspur C.G. Through The Secretary, Department Of Home And Police, Mantralay, Mahanadi Bhawan, Raipur C.G.
7. Shri Ashok Chourasiya The Then Head Constable, Police Station Tarbahar, Bilaspur, Distt. Bilaspur C.G. Through The Secretary, Department Of Home And Police, Mantralaya, Mahanadi Bhawan, Raipur C.G.

---- Respondents

For petitioner : Shri Rishi Rahul Soni, Advocate

For State : Shri Gurudev I Sharan, Government Advocate

For Respondent No. 3 : Shri Harshawardhan Parganiha, Advocate

For Respondents No. 4 and 5 : Shri Anil S. Pandey, Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

C.A.V. ORDER

1. The petitioner has filed the present Cr.M.P. under section 482 of the Cr.P.C. assailing the order dated 04.07.2014 passed in Criminal Revision No. 297/2012 by the learned 2nd Additional Judge to the Court the learned 1st Additional Sessions Judge, Bilaspur whereby learned 2nd Additional Judge has dismissed the revision petition filed by the petitioner against the order dated 14.04.2011 to 19.04.2011 passed in Criminal Case No. 17/2011.
2. The brief facts as projected by the petitioner are that in the night of 13.04.2011, the petitioner and his friend namely Anil Pandey were arrested by the police of police station – Tarbahar, Bilaspur alleging their involvement in Crime No. 155/2011 for offence punishable under Sections 294, 452 and 506 read with Section 34 of the Indian Penal Code. It is further contended that respondent No. 6 demanded an amount of Rs. 1 lakh and threatened the petitioner and his friend to send to jail if the amount is not paid. The petitioner and his friend some how managed to pay Rs. 50,000/- to him but he was not satisfied with Rs. 50,000/- and asked to pay remaining Rs. 50,000/-. On 14.04.2011, the petitioner and his friend were produced before the Judicial Magistrate First Class, Bilaspur where they were granted bail but since the petitioner and his friend could not pay remaining amount of Rs. 50,000/-, they were booked under Section 41(2)/110 of the Cr.P.C. by respondent No. 6 with the help of respondent No. 7.
3. On the very day, on 14.04.2011, the petitioner and his friend Anil Pandey were produced before the Executive Magistrate, Bilaspur and a preliminary order was passed against the petitioner under Section 111 of the Cr.P.C. to show cause why he may not be required to furnish a personal bond of Rs. 5000/- and one surety for the like amount for keeping peace for a period of one year. Thereafter, on the same day, one more order was issued under Section 116(3) of Cr.P.C. by the Executive Magistrate to execute interim bond of Rs. 5000/- with one surety for the like amount for maintaining good behavior during the pendency of the case for a period of one year. The petitioner and his friend produced interim bond before the

Executive Magistrate, Bilaspur but respondent No. 5 refused to grant bail saying that respondent No. 3 had prohibited him to release them on bail, consequently, the petitioner and his friend were sent to jail. Thereafter, on 15.04.2011, 16.04.2011, 17.04.2011 and 18.04.2011, the counsel engaged by the petitioner and his friend and surety for them Suresh Kumar Kankshi appeared before the Sub Divisional Magistrate, Bilaspur to get the petitioner and his friend Anil Pandey released on bail but respondent No. 3 refused to grant bail despite capable surety was produced. It is only on 18.04.2011, respondent No. 3 sent memo to Station-In-Charge, Police Station – Tarbahar, Bilaspur to release the petitioner and his friend Anil Pandey on bail on 19.04.2011. Accordingly, the petitioner and his friend Anil Pandey were kept in illegal detention from 14.04.2011 to 19.04.2011.

4. The petitioner filed Writ Petition (Criminal) No. 5054/2011 challenging the criminal proceedings under criminal case No. 17/2011 including the preliminary order dated 14.04.2011 under Section 111 Cr.P.C. as well as order dated 14.04.2011 under Section 116(3) Cr.P.C. and his wrongful detention from 14.04.2011 to 19.04.2011. The writ petition (criminal) was dismissed by this court vide order dated 02.09.2011 holding that the impugned orders are revisable. The petitioner filed writ appeal on 21.09.2011. During the pendency of the appeal, petitioner applied for certified copy of the order sheet dated 14.04.2011 passed in criminal case No. 1192/2011. Entire documents were filed along with writ appeal.
5. The Hon'ble Division Bench of this Court on 25.11.2021 directed respondent No. 3 to remain present before this Court on 12.12.2011. She appeared on 12.12.2011 and informed to this Court that the preliminary order was signed by respondent No. 4 G.R. Mahilange. On 27.07.2012, the said writ appeal was dismissed reserving liberty to the petitioner to file revision under Section 397 of the Cr.P.C. The operative part of the order is extracted below:-
 - “8. However, the appellant is granted liberty to file revision before the concerned Session Judge under 397 of Cr.P.C. against the orders passed by SDM in criminal case No. 17/2011 within 15 days. IN case if any such revision is filed by the appellant (writ petitioner) as permitted by this court then it shall be heard and decided by the Session Judge on its merits in accordance with

law uninfluenced by any of our observations, if found to be made on the merits which we have refrained from doing so.”

6. Pursuant to the liberty granted, the petitioner filed revision on 07.08.2014 before the Sessions Judge, Bilaspur under Section 397 of Cr.P.C. challenging the orders dated 14.04.2011 to 19.04.2011 passed in Criminal Case No. 17/2011. Subsequently the case was transferred to 2nd Additional Judge of the 1st Additional Sessions Judge, Bilaspur who dismissed the revision on 04.07.2014. The said dismissal of revision and entire proceedings by the Sub Divisional Magistrate are being in this petition.

7. On the above factual matrix, the petitioner has prayed for following reliefs:-

“(I) The Hon'ble Court may kindly be pleased to call for the entire records pertaining to this case for it's kind perusal;

(II) The Hon'ble Court may kindly be pleased to allow this petition and set aside the order dated 04.07.2014 (Annexure P/1) passed by the Learned 2nd Additional Judge of the Learned 1st Additional Session Judge, Bilaspur (C.G.) in Criminal Revision No. 297/2012 and the revision filed by the petitioner may kindly be allowed;

(III) The Hon'ble court may kindly be pleased to direct the respondent No. 1 to take appropriate action (criminal and disciplinary action) against the respondents No. 3 to 7.

(IV) The Hon'ble court may kindly be pleased to direct the respondents No. 3 to 7 to pay damages to the petitioner for having been illegally arrested on 14.04.2011 as well as for having been illegally kept in jail for the period from 14.04.2011 to 19.04.2011.”

8. Respondents No. 1 and 2 have filed their return mainly contending that the petitioner was directed to execute good behaviour bond for a period of one year and to furnish solvent surety of Rs. 5000/- but the petitioner has not executed the bail bond, therefore, he was sent to jail. They have highlighted past criminal records of the petitioner and also annexed the chart Annexure – R/1 showing criminal antecedents in which they have mentioned offences from year 2002 to 2011. Further would submit that The Executive Magistrate, Bilaspur had directed the petitioner to furnish two sureties and bail bond of Rs. 5000/- along with good behaviour bond. When on behalf of the

petitioner, two sureties were produced, it was found that both the sureties were having the past criminal records, hence, the bail bond was not accepted by the court. On the same day i.e. on 14.04.2011, the Sub-Divisional Magistrate, Bilaspur and the Tahsildar were not present, therefore, the Executive Magistrate has issued a preliminary order under Section 111 of the Cr.P.C. and on 15.04.2011, the matter was placed before the Sub Divisional Magistrate, Bilaspur, but on that date, no sureties were produced, therefore, no proceeding was taken place and next two days were holidays. Ultimately when the bail bond and sureties were produced before the concerned Executive magistrate, the release orders of the petitioner and his friend were passed. There is no illegality in the orders which warrant interference by this Court as per law laid down by the Hon'ble Supreme Court in case of **State of Haryana vs. Bhajan Lal**¹. This case does not fall within the category where this Court should exercise its power under Section 482 of Cr.P.C., therefore, the Cr.M.P. deserves to be dismissed.

9. The matter is pending since 2015 till 08.06.2021, notice to respondents No. 3 to 7 have not been issued. This court directed issuance of notice to respondents No. 3 to 7 fixing the case for 23rd July, 2021 for further hearing taking note of the paragraph 7 of the return filed by respondents No. 1 and 2 which is extracted below :-

“.....the Executive Magistrate, Bilaspur directed the petitioner to furnish two surety and bail bond of Rs. 5000/- along with good behavior bond. When on behalf of the petitioner, two sureties were produced, it was found that both the sureties are having the past criminal records and hence, because of this reason, the bail bond was not accepted by the Court.”

When said factual question was posed to the learned counsel for the State under what circumstances rejection of bail bond and surety was done, h has submitted that he may be given time to ascertain the legal provisions with regard to the question posed by this Court.

10. Pursuant to notice issued by this Court, respondents No. 3 to 5 have filed their return. Respondent No. 3 mainly rebutting the orders passed by the private respondents and learned Revisional Court would submit that the orders have been passed exercising powers

¹ AIR 1992 SC 604

conferred to them. Just to harass, she has been made party to this petition. It is nothing but abuse of process of law. The petitioner was directed to execute good behavior bond for a period of one year and to furnish the solvent surety of Rs. 5000/-, which he did not execute, hence he was sent to jail. She has unnecessarily been arrayed as party to this case. It is further contended that the petition is barred by limitation. The preliminary order was passed on 14.04.2011 and the same has already been challenged in earlier writ petition, therefore, the present petition may kindly be dismissed being devoid of merit.

11. Respondents No. 4 and 5 also have filed return reiterating the same stand and it has been contended that preliminary order has been passed by respondent No. 4 under Section 111 of Cr.P.C. which was filled up by the concerned clerk as it is not possible for the respondent himself to write the entire order sheet. Blank notice under Section 111 Cr.P.C. was neither served upon the petitioner nor was issued to him. The Petitioner has somehow or other in mechanical way obtained the copy, however, a complete notice was issued to him on 14.04.2011. On 15.04.2011, no security /surety bond were furnished before Sub Divisional Officer (Revenue). 16th and 17th April, 2011 being holidays, the petitioner was produced before the Tahsildar. Respondent No. 5 has taken the same stand which has been taken by respondent No. 4.
12. This Court vide order dated 08.06.2021 has ordered for issuance of notice to respondents No. 6 and 7 by registered post but the notice was awaited till the matter finally heard. The incident took place in the year 2011 and around 10 years have already been lapsed. The petitioner has made specific allegation against respondents No. 6 and 7 of illegal demand of Rs. 1,00,000/-. This allegation made against respondents No. 6 & 7 are disputed facts, which requires evidence and proof. This cannot be examined by this Court while hearing this petition, as such, this Court is granting liberty to the petitioner to take legal recourse available to him under law against respondents No. 6 and 7 for demand of illegal gratification where the petitioner will have opportunity to establish the allegations levelled by him against them in accordance with law.

13. I have heard learned counsel for the petitioner, State and respondents No. 3 to 5.

14. Before advertng to the merits of the case, it is expedient for this Court to extract relevant provisions of Cr.P.C. which are necessary for adjudication of the case.

“Section 107 of Code Of Criminal Procedure, 1973- Security for keeping the peace in other cases.

- (1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.
- (2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

Section 111 of the Code Of Criminal Procedure, 1973 - Order to be made. When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

Section 116 of the Code Of Criminal Procedure, 1973- Inquiry as to truth of information.

(1) When an order under section III has been read or explained under section 112 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons cases.

(3) After the commencement, and before the completion, of the

inquiry under sub- section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded: Provided that-

(a) no person against whom proceedings are not being taken under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behaviour;

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111.

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs: Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.

(7) Where any direction is made under sub- section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse.

**Section 121 of the Code of Criminal Procedure, 1973 -
Power to reject sureties:-**

(1) A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his

predecessor under this Chapter on the ground that such surety is an unfit person for the purposes of the bond: Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him.

- (2) Such Magistrate shall, before holding the inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall, in making the inquiry, record the substance of the evidence adduced before him.
- (3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub section (1), and the report of such Magistrate (if any), that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing: Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him.”

15. Learned counsel for the petitioner would submit that the petitioner was arrested by the police by exercising powers under Section 41(2) of the Cr.P.C. whereas Section 41(2) of the Cr.P.C. does not give such power to police to arrest a person who is going to be prosecuted under Section 110 of the Cr.P.C. From bare perusal of Section 41 of Cr.P.C. it is crystal clear that police can arrest a person without any warrant against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed cognizable offence and if certain conditions enumerated under Section 41(g) is fulfilled. The State has filed their return in which it is nowhere explained by the State that what was the situation for the police to arrest a person without an order from the Magistrate or without warrant.

16. The State in para 3 of the return has enumerated the past record of the petitioner contending that the petitioner was involved in Crime No. 155/2011 for the offence punishable under Sections 294, 506, 452/34 of the IPC registered at P.S. Tarbahar, Crime No. 156/11 for commission of offence punishable under Sections 452, 294, 384/34 of IPC and Crime No. 175/02 for commission of offence punishable

under Sections 392, 170, 342, 385/34 of the IPC registered at P.S. Civil Lines, Bilaspur and Crime No. 188/08 for commission of offence punishable under Sections 341, 294, 506, 323 and 427 of the IPC registered at P.S. Seepat, Bilaspur. The petitioner has already been granted bail for the said offences by the learned Judicial Magistrate First Class as reflected in the petition and is not disputed by the State. Thus, there was no material for the police to arrest the petitioner without warrant. The Hon'ble Supreme Court in case of **Social Action Forum for Manav Adhikar and Another vs. Union of India, Ministry of Law and Justice and Others**² has examined the provisions of Section 41 of Cr.P.C. and has held that unless such contents are available, the police cannot arrest. Relevant paragraphs of the judgment are extracted below:-

“26. The Court, thereafter, has drawn a distinction between the power to arrest and justification for the exercise of it and analysed Section 41 CrPC. Section 41 stipulates when police may arrest without warrant.

27. Scrutinising the said provision, the Court held as under:-

“7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the

² (2018) 10 SCC 443

power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC.”

29. The Court further went on to say that:-

“10. We are of the opinion that if the provisions of Section 41 CrPC 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 CrPC for effecting arrest be discouraged and discontinued.”
The directions issued in the said case are worthy to note:-

“11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b) (ii); 11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention; 11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing; 11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the

Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.”

30. The aforesaid decision, as is perceptible, is in accord with the legislative provision. The directions issued by the Court are in the nature of statutory reminder of a constitutional court to the authorities for proper implementation and not to behave like emperors considering the notion that they can do what they please. In this context, we may refer with profit to a passage from *Joginder Kumar v. State of U.P and others*:-

“20. ... No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person’s complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do.”

31. Again, the Court in *Joginder Kumar (supra)*, while voicing its concern regarding complaints of human rights pre and after arrest, observed thus:-

“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 (1994) 4 SCC 260 deciding which comes first—the criminal or society, the law violator or the law abider....”

17. In the present case, the petitioner was arrested for the offence punishable under Section 294 of the IPC where as he has already granted bail. Therefore, on 14.04.2021 the petitioner was arrested for the offence under Section 110 of Cr.P.C by recording its finding that “अनावेदक बदमाश किस्म का व्यक्ति है इसके वरिद्ध थाना तारबहार में अप0क0 155/11 धारा 294, 506, 34, 452 आईपीसी0 तथा थाना सीपत में अप0क0 188/08 धारा 341, 294, 506, 323, 427 आईपीसी0 के प्रकरण दर्ज है। अनावेदक का हौसला बुलंद है इसका स्वच्छन्द रहना समाज के लिए अहितकर है। अतः अनावेदक को प्रतिबंधित करने हेतु धारा 41(2) सीआरपीसी0 के तहत गिरफ्तार कर धारा 110 सीआरपीसी0 का इस्तेमाल तैयार किया गया है जो प्रतिभूति से प्रतिबंधित करने हेतु न्यायालय प्रस्तुत है।” This clearly shows the high-handedness on the part of police authority because as per Section 41(2) of the Cr.P.C. it is incumbent upon the police to record findings that the person has been arrested to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer, unless such person is arrested, his presence in the Court which is required cannot be ensured.
18. Section 41(ii) of the Cr.P.C. provides that police officer shall record while making such arrest his reasons in writing. No such mention of the facts are available along with the final report submitted by the authorities, therefore, arresting accused without warrant under Section 41(ii) is nothing but amounts to illegal detention. This Court vide order dated 08.06.2021 has ordered for issuance of notice to respondents No. 6 and 7 by registered post but the notice was awaited till the matter finally heard. The incident took place in the year 2011 and around 10 years have already been lapsed. The petitioner has made specific allegation against respondents No. 6 and 7 of illegal demand of Rs. 1,00,000/-. This allegation requires evidence and proof therefore, this Court is granting liberty to the petitioner to take legal recourse available to him under law against respondents No. 6 and 7 for prosecute them for alleged demand of

illegal gratification where the petitioner will have opportunity to agitate the same in accordance with law by adducing evidence in support of his contention.

19. Only respondents No. 1 to 5 have been duly served with notice by this Court and they have filed their respective counter affidavits. As such, this Court has examined procedure followed by respondent No. 3 to 5 while conducting proceedings under 107, 110, 111, 116(3) Cr.P.C.
20. Learned counsel for the petitioner would submit that the preliminary order dated 14.04.2011 under Section 116(3) of Cr.P.C. has been passed in very mechanical way. Blank space has been left in the order and this fact has also been admitted by respondent No. 4 in his counter that it was not possible for him to write over entire order therefore, it was left to be filled up by the clerk and would submit that the concerning Executive Magistrate without application of mind has passed the order. Respondents No. 3 to 5 have transgressed their limitation while discharging their duties. Order dated 14.04.2011 under Section 116(3) of the Cr.P.C. has also been passed in mechanical way without application of mind as there was no such emergency required for passing such order. He would further submit that from bare perusal of Section 116(3) of the Cr.P.C., if the Magistrate considers that immediate measures are necessary for the prevention of breach of the peace or disturbance of the public tranquility or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded. But no such emergency situation is available for him to exercise this power and also there is no such material was found against the petitioner even in the final report, neither dangerous nor absconder nor used weapon. It is only mentioned that “सहयोगियों सहित सक्रिय रहता है” rest of the points in column 12 of the final report has not been filled. Therefore, it is clear

that there was no such material available for the Sub Divisional Magistrate to pass order under Section 116(3) of the Cr.P.C.

21. The Hon'ble Supreme Court in case of **Madhu Limaye vs Sub-Divisional Magistrate, Monghyr and Others**³ while examining the constitutional validity of Section 144 and Chapter VIII of the Criminal Procedure Code, Hon'ble the Supreme Court has considered the safeguards which is available to citizens against the action to be taken by the authorities under Chapter VIII of the Cr.P.C. and has been held as under:-

“35. We have seen the provision of Section 107. That section says that action is to be taken 'in the- manner hereinafter--provided and this ,clearly indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. It behoves us, therefore, to emphasise the safeguards built into the procedure because from there will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of the general public.”

22. The Hon'ble High Court of Allahabad High Court in case of **Siya Nand Tyagi vs State of U.P.** held in para 7 as under :-

“7. In the present case the learned Sub-Divisional Magistrate has thrown the mandatory provisions of Section 111 of the Code to the winds and has prepared a printed pro forma. The learned Magistrate has also not recorded his opinion that there existed sufficient grounds to take action under the provisions of Section 107 of the Code.”

23. The Hon'ble High Court of Karnataka in case of **Vijaya Bank, M.G. Road, Bangalore and Another vs. State**⁴ has held in paragraph 4 as under :-

“4When a challenge is raised as to the invalidity of the order taking cognizance, the matter would have to be examined by the Court with reference to the complaint itself and if an offence is in fact disclosed, omission to use the expression "cognizance is taken" by the Court, would not be of any value having regard to the decision of the Supreme Court in A.R. Antulay v R..S. Nayak, which is to the effect that when the Court issues process it means, the Court has taken cognizance of the offence and it is the visible manifestation of the act of taking

³ 1970 (3) SCC 746

⁴ 2000 ILR Karnataka 4773

cognizance. But in cases of this nature, where the Magistrate mechanically signs a filled up form, it may be difficult to arrive at a conclusion that the process of "taking of cognizance" has actually been complied with. In the circumstances of the case, it appears to me that the taking of cognizance by the Court appears to be mechanical and cannot be sustained."

24. The High Court of Allahabad in case of **Abdul Rasheed vs State of U.P. and Another**⁵ in paragraph 6 has held as under :-

6. Whenever any police report or complaint is filed before the Magistrate, he has to apply his mind to the facts stated in the report or complaint before taking cognizance. If after applying his mind to the facts of the case, the Magistrate comes to the conclusion that there is sufficient material to proceed with the matter, he may take cognizance. In the present case, the summoning order has been passed by affixing a readymade seal of the summoning order on a plain paper and the learned Chief Judicial Magistrate had merely entered the next date fixed in the case in the blank portion of the readymade order. Apparently the learned Magistrate had not applied his mind to the facts of the case before passing the order dated 10.1.2006, therefore, the impugned order cannot be upheld."

25. The High Court of Allahabad in case of **Kanhaiya vs State of U.P. and others** decided on 1st December, 2020 in Application u/s 482 No. - 17006 of 2020 taken the same view as **Siya Nand Tyagi (Supra)**.

26. The High Court of Delhi in case of **Tavinder Kumar and Another vs State**⁶ in paragraph 9 and 10 has held as under:-

"9. In nutshell the above provisions, of law show that on receipt of the information in the present case kalandra given by the police, the Magistrate was bound to record his opinion as contemplated by Section 107 and thereafter was to prepare the notice under Section 111 which must contain the substance of the information so received and was bound to send the convict such notice Along with the summons to the person concerned. The stag passing any order under Section 116(3) could arise only after the summons and notice as required by Sections 111 and 113 had been served on the petitioners and the enquiry had commenced. It is really surprising that the learned Magistrate had got ready an order under Section 116(3) of the Code before, even he had applied his mind regarding holding of inquiry or before even commencement of the inquiry. This is not a judicial approach expected of a judicial officer who is bound to decide such matters in a judicial manner.

(10) In the present case-the orders made by the Executive Magistrate on the Kalandra and the notices issued under

⁵ 2010 (9) ADJ 594

⁶ 1990 CriLJ 40

Section 111 of the Code of Criminal Procedure are not in consonance with the provisions of law.”

27. From the bare perusal of the order in case in hand, it is crystal clear that preliminary order under Section 111 of the Cr.P.C. passed on 14.04.2011 is printed format/cyclostyled format, this passing of preliminary order without application of mind has been deprecated by various high courts as they do not reflect application of mind.
28. Learned counsel for the petitioner would submit that the Sub-Divisional Magistrate can reject surety as per the power conferred to her under Section 121(1) of the Cr.P.C. This power has to be exercised as per the procedure prescribed under Cr.P.C. and the Magistrate is required to satisfy that surety is not fit for the purpose of bond. No such procedure to satisfy has been recorded in the order. The surety has been rejected only on the count that the person who was giving surety had criminal antecedents. If we examine Section 121 of the Cr.P.C. it is evident that before rejection of the surety the Magistrate has to hold enquiry giving reasonable notice to the person whom surety was offered, record the substance/ information adduced before him. If satisfied, then only he can consider for rejection of bail bond and surety submitted by the accused, but no such procedure has been followed by the learned Sub-Divisional Magistrate. The State has filed their return in which they have not demonstrated any procedure which has been taken before rejection of bail bond and surety submitted on behalf of the petitioner. Respondents No. 3 to 5 have filed their return in which they have also not denied this fact that such procedure has been followed. Therefore, procedure followed by respondents No. 3 to 5 clearly shows their highhandedness. Thus, the detention of the petitioner from 14.04.2011 to 19.04.2011 amounts to illegal detention.
29. In this regard, law is well settled that if particular thing has to be done in particular manner then it has to be done in that particular manner only not otherwise as held by the Hon'ble Supreme Court in case of **Opto Circuit India Ltd. vs. Axis Bank and others**⁷ in para 15 as under :-

“15. This Court has time and again emphasized that if a statute

⁷ AIR 2021 SC 753

provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an Election Petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an Election Petition in the case of Chandra Kishor Jha vs. Mahavir Prasad and Ors. (1999) 8 SCC 266 and in the course of consideration observed as hereunder:

“It is a well settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner”.

30. The learned First Additional Sessions Judge in the Court of Second Additional Sessions Judge, Bilaspur has not examined the fact that the petitioner is victim of highhanded of the authorities and has been illegally detained and dismissed the petition on the count that since the period of proceedings has already been elapsed, therefore, no order is required to be passed. This order suffers from material irregularities and illegality and even not examine the fact of illegal detention of the petitioner, is erroneous one and liable to be quashed. Accordingly, the order dated 04.07.2014 (Annexure P/1) passed in Criminal Revision No. 297/1212 is quashed.
31. Thus, from the above discussion and considering the factual matrix of the case, it is quite vivid that the petitioner is subjected to illegal detention in jail from 14.04.2011 to 19.04.2011. Since, it has been held by this Court that petitioner has been illegally detained in jail from 14.04.2011 to 19.04.2011 he is entitled to get compensation of Rs. 30,000/- which is payable by the State and recoverable from the salaries or retiral dues of erring officers/ respondents No. 3 to 5, if the Government servants have already attained the age of superannuation and getting pensioner benefits from the State. The State is directed to deposit Rs. 30,000/- within 6 weeks from the date of receipt of copy of this order.
32. The Hon'ble Supreme Court in case of **D.K. Basu vs. State of West Bengal and Others**⁸ has held that a constitutional Court in appropriate Bench in illegal detention under Article 32/36 of Constitution of India can award compensation. The Hon'ble Supreme

⁸ (1997) 1 SCC 416

Court has held at para 44 and 54 as under:-

- “44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages of tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.
54. Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must recover the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. That award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, in addition to the traditional remedies and not a derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any

amount which may be awarded to the claimant by way of damages in a civil suit.”

- 33.** This Court makes it clear so far as the allegation of the petitioner against respondents No. 6 and 7 / police authorities of demanding illegal gratification of Rs. 1,00,000/- is concerned, since it is a matter of enquiry and investigation, liberty is granted to the petitioner to take recourse available under the law.
- 34.** With the above observations and directions, the present Cr.M.P. is allowed to the extent indicated herein-above by setting aside the order dated 4-7-2014 passed in Criminal Revision No. 297 of 2012.

Sd/-

(Narendra Kumar Vyas)
Judge

kishore