

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2142 OF 2022

Pravin Dnyaneshwar Shinde .. Applicant
Versus
The State of Maharashtra .. Respondent

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Saurabh More for the Applicant.

S.V. Gavand, A.P.P. for the State/Respondent.

Shri Sirsat, PSI, Bhayander, Police Station

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CORAM: BHARATI DANGRE, J.
DATED : 05th AUGUST, 2022

P.C:-

1. Learned APP has placed on record the Standing Order No.3 of 2022 dated 20/07/2022, issued by the Director General of Police Maharashtra State, Mumbai, in regard to the subject “Law of Arrest” and Hon’ble Supreme Court Guidelines - “compliance with”.
2. By referring to the decision of the Hon’ble Supreme Court in case of *Arnesh Kumar v/s State of Bihar & Anr.*, (2014) 8 SCC 273 and the decision in case of *Satenderkumar Antil v/s Central Bureau of Investigation and anr.* (2021) 10 SCC 773, the Director General of Police, Maharashtra State, Mumbai, has issued Guidelines for all the Police Station In-charge and the Investigating Officers and has made it imperative to follow the same, as a duty imposed upon them.

The said Guidelines contemplate assessing the requirement of arrest and recording satisfaction for arrest. It also contemplates that if the Investigating Officer decides to arrest the person, by assessing the adequacy of evidentiary material for effecting the arrest, he shall ensure recording of the reasons for not making an arrest as well as reasons for making an arrest.

3. The area of responsibility for the Police Station Incharge and the Investigating Officer is set out in the following words:

“Needless to add that the decision to arrest an accused person during an investigation is a decision which requires to be exercised with due application of mind keeping in view the material and evidence gathered by the Investigating Officer. Once the Investigation Officer arrives at a decision to arrest an accused persons, he has then to effect the arrest by complying with the procedure for arresting persons as enshrined in the Code read with various guidelines issued by the Constitutional courts, which have now been consolidated in this Standing Order. In case the police station in charge himself is not investigating the case, then it will be incumbent upon him to supervise the arrests being effected by his subordinate officers. As such, the in- charge and investigation officers have the following duties in this regard.

1. Assessing the requirement for arrest and recording satisfaction for arrest if it is decided to arrest the person.

2. Implications of Section 41(1)(b) of Code.

3. Assessing the adequacy of evidentiary material for effecting arrest.

4. To ensure that reasons are recorded for not making an arrest as well as for making an arrest.

5. To ensure that if decision is taken to not to arrest, then the intimation is sent to the magistrate within the prescribed timeframe or the deadline is got extended from the CP/SP.

6. If it is decided to issue a notice for appearance to the accused person, the notice should be served within the prescribed timeframe or the period is got extended from the CP/SP.

7. Ensuring procedural compliance in accordance with Section 41B of the Code read with Section 60A of the Code and other provisions of Chapter V of the Code and guidelines issued by the Hon'ble Supreme Court from time to time, especially Arnesh Kumar guidelines."

4. The Commissioner of Police, the Superintendent of Police and SDPOs are also cast with the responsibility to

bring the above directions to the notice of the Investigating Officers and the superior police officers. They are also cast with the following responsibility :-

“Apart from ensuring the provision of a checklist, the Commissioners of Police and Superintendents of Police have also been empowered to extend the deadline for communicating the decision not to arrest the accused by the investigating officer to the Magistrate or for extending the timeline for issuing appearance notice to the accused whom the investigating officer has decided not to arrest. These guidelines provide for an active role for the superior officers for ensuring that the arrests are justified and that the procedure laid down is followed.

As such the compliance of these guidelines needs to be closely supervised by the Commissioner of Police/ Superintendent of Police, Dy. Commissioners of Police, SDPOs, ACPs. It may be appreciated that the Investigating Officers are liable for disciplinary action or the contempt of Court for non-compliance of the Guidelines and the supervisory officers can also be held liable.

5. The aforesaid guidelines being issued by the Director General of Police in the backdrop of the Plethora of arrest, guidelines issued by the Hon’ble Supreme Court, but failure to implement the said guidelines and it was found necessary to consolidate and reiterate the procedure for arrest by the Police Officers in the State.

6 Hopefully, each and every police official of the State Government has been communicated with the said Guidelines and, if not, let the respective Commissioners, Superintendent of Police, and SDPOs ensure that the Guidelines, are communicated to every Police Station In-Charge and Investigating Officer by publishing it on the website of the State Government as well as website of the Police Department. Time of 15 days is granted for circulating the Guidelines in an effective manner. On completion of 15 days, each Police Officer In-Charge and the Investigating Officer shall adhere to the Guidelines as directed, and their failure to do so, will call for a disciplinary action.

7 The guidelines shall be circulated to all the Police Station In-Charge and the Investigating Officers in the State of Maharashtra on or before 30/08/2022 and it is made clear that failure to abide by the said Guidelines, shall invite the disciplinary action against the said officer as well as the superiors.

8 As far as the present application is concerned, since the offence invoked is under the provisions of Section 498-A of the IPC, the Investigating Officer shall issue a notice under section 41 A of the Cr.P.C. to the applicant which shall be abided by. The Investigating Officer, shall follow the mandate of section 41A of the Cr.P.C.

9 This order shall be brought to the notice of the Director General of Police, Maharashtra State, Mumbai, who shall ensure the compliance of the directions as above.

10 The application is disposed off.

(SMT. BHARATI DANGRE, J.)