

D/L
Item No. 07
03.07.2023
KOLE

WPA 14565 of 2023

Sahadat Piyada
-Vs.-
The State of West Bengal & Ors.

Mr. Sabyasachi Chatterjee,
Mr. O. F. Gazi,
Mr. D. Das,
Mr. B. Karim,
Mr. S. Saha,

...for the petitioner.

Mr. Amitesh Banerjee, Sr. Standing Counsel,
Mr. Ipsita Banerjee,
Mr. S. Adak,

.... For the State.

1. The Deputy Superintendent of Police, Sundarban Police District filed a report dated 3rd July, 2023. There is list of ten FIRs in which the petitioner has been named as an accused.
2. The petitioner is at liberty as on date. The only question that remains for consideration in the matter by this court is as to whether the practice of being shown arrested and not producing an accused before the Magistrate can be countenanced under the Cr. P.C. and the Constitution, or not.
3. Counsel for the petitioner relies upon a decision of the Hon'ble Apex Court in the case of **Manoj-vs.-State of M.P.**, reported in **(1999) 3 SCC 715**, particularly in paragraph 11, 12, 13 and 14 thereof.

“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 '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 the 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.”

4. The malaise and illegal practice of showing somebody as arrested and avoid producing him before the Magistrate has also come up for consideration before three benches of this Court.
5. It is clearly evident from the aforesaid decision of **Manoj (Supra)** that Section 57 of the Cr. P. C. encompasses the principles of Article 21 of the Constitution. A person is required to be produced before a Magistrate within 24 hours of his detention. Further detention can only be made only under orders of the Magistrate.
6. It is for this purpose and bearing the rights of citizen under Article 21, as enunciated in Section 57 of the Cr. P. C. that the Hon'ble Apex Court in the case of **Rini Johar-vs.-State of Madhya Pradesh & Ors.**, reported in **(2016) 11 SCC 703** also mandates sufficient reasons and grounds to be indicated by the Investigating Officer to seek prolonged detention of an accused in police custody or otherwise. At Paragraph 23 of the said case it was held as follows:

23. *In such a situation, we are inclined to think that the dignity of the petitioners, a doctor and a practising advocate has been seriously jeopardised. Dignity, as has been held in Charu Khurana v. Union of India [Charu Khurana v. Union of India, (2015) 1 SCC 192 : (2015) 1 SCC (L&S) 161] , is the quintessential quality of a personality, for it is a highly cherished value. It is also*

clear that liberty of the petitioner was curtailed in violation of law. The freedom of an individual has its sanctity. When the individual liberty is curtailed in an unlawful manner, the victim is likely to feel more anguished, agonised, shaken, perturbed, disillusioned and emotionally torn. It is an assault on his/her identity. The said identity is sacrosanct under the Constitution. Therefore, for curtailment of liberty, requisite norms are to be followed. Fidelity to statutory safeguards instil faith of the collective in the system. It does not require wisdom of a seer to visualise that for some invisible reason, an attempt has been made to corrode the procedural safeguards which are meant to sustain the sanguinity of liberty. The investigating agency, as it seems, has put its sense of accountability to law on the ventilator. The two ladies have been arrested without following the procedure and put in the compartment of a train without being produced before the local Magistrate from Pune to Bhopal. One need not be Argus-eyed to perceive the same. Its visibility is as clear as the cloudless noon day. It would not be erroneous to say that the enthusiastic investigating agency had totally forgotten the golden words of Benjamin Disraeli:

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

7. In turn, the Magistrate is also required to give sufficient and detailed reasons for depriving a person of liberty as granted under Article 21 of the Constitution. In the case of **Arnesh Kumar Vs. State of Bihar & Anr.** reported in **(2014) 8 SCC 273** the Apex Court has gone to the extent of prescribing disciplinary measures against the Investigating Officer and the Magistrate if sufficient grounds and reasons are not made out in the application for and in the orders for detaining a

person in custody without just or reasonable cause. At Paragraph 11, it was held as follows:

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.*

8. In the above circumstances, this court directs the State Police to strictly comply with all the dicta of the Hon'ble Supreme Court in the case of **Manoj-vs.-State of M. P. (supra)** and to forthwith discard this practice of showing somebody as arrested.
9. The dicta of the Hon'ble Apex Court in the case of **Arnesh Kumar (supra)** is also to be strictly followed by the Police Officers of the State.
10. Let a copy of this order be made available to the Inspector General of Police, West Bengal for issuing appropriate circular to all the Superintendent of Police and Officer in Charge of the State Police for strict and necessary compliance.
11. The writ petition stands disposed of.
12. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)