

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO.155 OF 2023

Sau. Abha Harshwardhan Verma and others

Vs.

State of Maharashtra, through PSO Sadar, Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri R.H. Rawlani, Advocate for applicants.
Shri S.S. Doifode, APP for non-applicant/State.
Shri Surendra Mishri Prasad, Advocate (assist to prosecution)

CORAM : ANIL L. PANSARE, J.

DATE : APRIL 11, 2023.

Heard.

2. The applicants are apprehending arrest in Crime No.66/2023 registered with Police Station, Sadar, Nagpur City, Nagpur for the offence punishable under Sections 406, 420, 468, 471 read with Section 34 of the Indian Penal Code. Learned counsel for the applicant submits that the maximum punishment for the alleged offences is seven years.

3. If that be so, the Investigating Officer is bound to follow the directions issued by the Hon'ble Supreme Court in *Satender Kumar Antil V/s Central Bureau of Investigation and another*; reported in (2022) 10 SCC 51 and *Arnesh Kumar V/s State of Bihar*, reported in (2014) 8 SCC 273 and also to abide by the Standing Order No. 3 of 2022 dated

20/7/2022 issued by the Director General of Police, Mumbai.

4. The Hon'ble Apex Court has, in the above two cases, issued a slew of directions, and in a way laid down a complete mechanism for investigating a crime, where the offence alleged is not punishable for more than seven years.

5. In ***Arnesh Kumar's*** case (*cited supra*), the Supreme Court, while considering the offences punishable up to 7 years, has held that the compliance of Section 41 of the Code of Criminal Procedure is mandatory and opined that if provisions of Section 41 of the Code is complied, then number of cases which come to the Court for grant of anticipatory bail will substantially reduced. The Apex Court has held that the Police Officer, before arresting, 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 of Section 41 of the Code is satisfied, power of arrest should be exercised. The Court then directed the State Government to provide to all the Police Officers a check list containing specified sub-clauses under Section 41(1)(b)(ii). The Police Officers are required to forward the check list duly filled and furnish the reasons and material which necessitated the arrest while forwarding/producing the accused before the Magistrate for further detention. The Apex Court then directs the Magistrate to peruse the report

furnished by the Police Officer and only after recording its satisfaction, the Magistrate will authorise detention. It is then directed that the decision not to arrest an accused should be forwarded to the Magistrate within two weeks from the date of the institution of the case. Such decision could only be extended by the Superintendent of Police of the district for the reasons to be recorded in writing. The Apex Court has then held that the failure to comply with the directions aforesaid shall apart from rendering the Police Officer concerned liable for departmental action, he shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction. The Apex Court has also held that non-compliance with Section 41 of the Code would entitle the accused to grant of bail.

6. In ***Satender Kumar's*** case (*cited supra*), the Apex Court observed that despite directions in ***Arnesh Kumar's*** case, no concrete steps have been taken to comply with the mandate of Section 41A of the Code, and therefore, the Hon'ble Apex Court has issued guidelines to deal with the bail applications.

7. The Apex Court has held that sub-clause (1)(b)(i) of Section 41 has to be read along with sub-clause (ii), and therefore, both the elements of '*reasons to believe*' and '*satisfaction qua an arrest*' are mandated and accordingly are to be recorded by the Police Officer. The Apex Court has

discouraged the practise followed by the Investigating Officers of mechanically reproducing in the case diary of or most of the reasons contained in Section 41 of the Code for effecting arrest.

8. Thus, firstly, the Police Officer has to take a decision whether or not the accused should be arrested. He has to record the reasons in writing in support of the decision. If the Police Officer takes decision '*not to arrest*' the accused, the said decision shall be communicated to the concerned Magistrate within two weeks from the date of institution of the case/FIR. This decision, however, should be taken as expeditiously as possible, for the reason that the best evidence could be collected immediately after commission of the offence and further to rule out the possibility of tampering with the evidence. If the Police Officer takes a decision '*to arrest*' the accused, then upon his arrest the Police Officer is duty-bound to produce the accused before the Magistrate within 24 hours and while producing the accused, the Police Officer is duty-bound to furnish the reasons and material which necessitated the arrest and thereupon the Magistrate is duty-bound to peruse the report furnished by the Police Officer and only after recording its satisfaction the Magistrate will authorise further detention. Needless to mention that the satisfaction by the Magistrate will be reflected in its order.

9. The Apex Court then warned that failure to comply

with directions shall render the Police Officer concerned liable for departmental action. The Apex Court further expects the trial Courts to come down heavily on the Police Officers effecting arrest without due compliance of Sections 41 and 41A of the Code.

10. This is not to suggest that in the cases where maximum punishment is seven years, the accused persons cannot be arrested at all. What is suggested, is that in normal and ordinary course, the police should always avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of cooperation is provided by accused to the Investigating Officer in completing the investigation. It is only in cases of utmost necessity where investigation cannot be completed without arresting the person, for instance, a person may be required for recovery of incriminating articles or weapons of offence or for elucidating some information or clue as to his accomplices or any substantial evidence, that his arrest may be necessary. Such an arrest may also be necessary if the Investigating Officer concerned and/or incharge of police station thinks that presence of the accused will be difficult to procure because of grave and serious nature of the crime as the possibility of his absconding or disobeying the process or fleeing from justice cannot be ruled out.

11. The Investigating Officer, therefore, is expected to

avoid arresting a person and sending him to jail, if it is possible for him to complete investigation without arresting the accused. Therefore, the Investigating Officer may explore possibility of completing investigation without arresting accused even where the recovery of incriminating articles or weapons of offence is to be made. For this, the Investigating Officer will have to consider the attending circumstances. Broadly there could be two categories of the cases. The first is the one where the offence is not pre-meditated or is not strategic, where the offence has been committed at the spur of the moment and the offender is not history-sheeter, the offence is based on agreements or contract and in essence is a civil dispute, the accused is the first time offender and so on. The Investigating Officer while investigating the crime in this category may explore possibility of not arresting the accused and to issue him notice under Section 41A of the Code of Criminal Procedure for the purpose of elucidating necessary information. The attendance of the accused in response to the notice under Section 41A of the Code could be treated as custody for the purpose of discovery under Section 27 of the Indian Evidence Act. The other category of the offences could be where the offence has been committed with pre-determined mind, the nature of weapons used, the manner in which the offence has been committed, the criminal antecedents of the accused, the economic offences indicating strategic operation and so on. The Investigating Officer while investigating the crime in the said category may decide to arrest the accused by recording reasons in

terms of the Judgments of Hon'ble Supreme Court. The above two categories are illustrative, and therefore, the decision to arrest or not to arrest will have to be taken by the Investigating Officer depending on the nature of the offence and all other attending circumstances.

12. Thus, in appropriate cases, arrest of accused will be justified, of course, subject to strict compliance of law laid down by the Hon'ble Apex Court in the aforementioned two judgments.

13. The accusation will have to be teseted in the above backdrop. The prosecution case is that the informant is owner of shop nos.15 and 16 at Sadar Residency Road, Nagpur. The said shops have been given on rent to the applicant no.1 in terms of agreement in the year 2013. The applicant no.1 started shop in the name and style 'Pumkin Garments'. The applicant no.2 is the daughter of the applicant no.1 and applicant no.3 is the servant. In the year 2018, the rent agreement was renewed. The applicant no.1 paid rent till February-2020 and thereafter did not pay till March-2022 because of lockdown. The informant demanded rent after lockdown but the applicant no.1 did not pay the rent nor intent to pay. The civil suit in that regard is pending. It is further the case of the proseuction that the informant came to know that the applicant no.2 has started business in shop no.16 and for doing so a document before GST office has been submitted, which according to the informant is a bogus document. The document under

question is consent letter issued by the informant. According to the informant, signature on consent letter is fabricated signature and the document is shyam and bogus. The applicant no.1 is said to have acquired GST number on the basis of said consent letter in the name of applicant no.2-Preeth. It is further alleged that Gumasta licence has been obtained in the name of applicant no.3. Thus the accusation is that applicants have prepared bogus and fabricated consent letter and pursuant thereto have obtained GST number and have obtained Gumasta licence in the name of applicant no.3.

14. When enquired, learned counsel for the applicants could not give satisfactory answer to the query, the consent letter has been issued by the informant. He however submits that original consent letter has been seized by the investigating officer and seizure panchanama to that effect has been drawn.

15. Learned APP submits that there are two consent letters, one is dated 11.08.2021 and another is dated 18.08.2021. He submits that the specimen signatures of all the applicants is necessary.

16. At this stage, learned counsel for the applicants submits that consent letter dated 18.08.2021 has been seized and he further submits that the consent letter dated 11.08.2021 has not been preserved and is not traceable. He further submits that the applicants have and will cooperate

in the investigation and will give specimen signatures as well. Thus, it appears that the applicants are ready to cooperate in the investigation. The investigating officer will be mindful of the aforesaid submission made by the learned counsel for the applicants before taking decision to arrest or not to arrest the applicants, which will be tested in the light of the judgments of the Hon'ble Supreme Court referred above.

17. The Investigating Officer, therefore, shall proceed with the investigation in terms of the law laid down by the Hon'ble Apex Court in the cases of ***Satender Kumar*** and ***Arnesh Kumar*** (*cited supra*) so also the observations made herein above.

18. Learned counsel for the applicants submits that the investigating officer may arrest the applicants without any valid reason. This apprehension is uncalled for because the investigating officer is bound to be careful in arresting the accused as he will suffer stringent action of departmental enquiry, if it is found by the learned Magistrate that the arrest was not necessary for completing investigation.

19. Copy of the order be served upon the Police Officer, who is incharge of the Police Station, Sadar, Nagpur City. He shall ensure compliance of the aforesaid Rulings.

20. Copy of the order shall also be served upon the learned Magistrate and the learned APP of the trial Court,

who shall also ensure compliance of the aforesaid Rulings.

The Criminal Application is disposed of in above terms.

(Anil L. Pansare, J.)

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