

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

CRIMINAL WRIT PETITION NO. 858 OF 2022

PETITIONER : Sadhana w/o Ajinkya Rathod, Aged 25 years, Occupation: House Wife t/o Sunil Ramchandra Gaupale Near Samaj Kalyan Hanuman Mandir, near Prashant Nagar Garden, Ajni Chauk, Nagpur.

//VERSUS//

RESPONDENT : State of Maharashtra through PSO Dhantoli Police Station, Dhantoli Nagpur.

Mr. N.B. Rathod, Advocate for the Petitioner.

Mr. A.R. Chutke, APP for the Respondent/State.

CORAM : G. A. SANAP, J.

DATED : 6th FEBRUARY, 2023.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is heard finally by consent of the learned advocates for the parties.

02] In this criminal writ petition, filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, the petitioner, who is the wife of

arrested accused Ajinkya Subhash Rathod, has questioned the correctness of the orders dated 1st December, 2022 and 5th December, 2022 passed by the learned Judicial Magistrate First Class, Nagpur Court No.1 granting police custody remand to the husband of the petitioner and also for quashing and setting aside these two orders as well as the order dated 8th December, 2022 passed by the learned Judicial Magistrate First Class, Nagpur remanding the husband of the petitioner to the magisterial custody. The petitioner has also prayed for grant of bail. The petitioner has also prayed for quashing the order dated 5th December, 2022, rejecting the application made by the petitioner under Section 97 of the Code of Criminal Procedure, 1973 (for short "Cr.PC).

03] The necessary and relevant facts for the decision of this petition need to be stated in brief.

The petitioner is the wife of arrested accused Ajinkya Subhash Rathod. Ajinkya was arrested in Crime No.332/2022 registered at Dhantoli Police Station (City) Nagpur for the offences punishable under Sections 420, 465, 468, 471 read with Section 120-B of the Indian Penal Code, 1860 (for short "IPC") and Sections 42 and 45 of the Prisons Act, 1894. Ajinkya is the Police Constable attached to the Central Prison, Nagpur. He was given

assignment at the entrance gate of the Central Prison, Nagpur to guard the prison gate. The officials of the Crime Branch, Nagpur received the secret information from the informant that some persons have prepared a bogus sim card by forging the documents. The said sim card was used by the jail inmates for transmitting the messages through jail officials to their relatives and friends outside the jail. The officials of the Crime Branch commenced an inquiry and during the said inquiry, the name of Ajinkya and the role played by him were surfaced. The inquiry revealed that Ajinkya and one more Jail Constable were taking money and supplying Ganja and other articles to the jail inmates. They were also transmitting the chits and messages of the prisoners to their friends and relatives outside the jail through their WhatsApp mobile number. The inquiry revealed the mobile number and other details such as money accepted by Ajinkya for doing favour to the jail inmates. The Crime Branch officials, therefore, made an inquiry with Ajinkya. On verifying and confronting the information already available with the Crime Branch, the Crime Branch officials found that the major role in the commission of serious crime was committed by Ajinkya. Considering the concrete information and the serious offences revealed on the basis of the information, Shri Kishor Parvate, Police Inspector attached to Crime Branch, Nagpur

City, lodged the report on 30th November, 2022 at Dhantoli Police Station at 18:06 hrs.

04] On the basis of this report, First Information Report (FIR) came to be registered. The investigation of this crime was handed over to Smt. Prabhawati Akurke, Senior Police Inspector, Dhantoli Police Station, Nagpur. Accused Ajinkya and the accused Prashant Rathod, both Prison Constables, were brought to the Dhantoli Police Station by the informant on 30th November, 2022 at 19:00 hrs. After registration of the FIR, the Investigating Officer on 1st December, 2022 at 00.17 hrs. made an inquiry with these accused to verify their involvement in the crime. The wife of Ajinkya, who is the petitioner herein, by the time had come to the police station. The Investigating Officer gave her information about the offences and the purpose of inquiry. In the night, thorough inquiry was made with Ajinkya and Prashant Rathod. The mobile phone used by the accused Ajinkya in the commission of crime was seized on 1st December, 2022 at 6:50 to 7:40 hrs. The serious role played by them in the commission of crime by the time was revealed. The Investigating Officer, therefore, forwarded the accused Ajinkya and Prashant Rathod, the Prison Constables, for

medical examination. After medical examination, they were arrested on 1st December, 2022 at 9:26 hrs. The intimation of the arrest of the accused Ajinkya was given to his cousin brother Vaibhav Rathod, who was present in the Police Station along with the wife of the accused Ajinkya. The intimation of the arrest of the accused Ajinkya (Prison Constable) was immediately given to his employer namely Superintendent of Central Jail, Nagpur in writing. The necessary entries in the station diaries were made by the Investigating Officer. The Investigating Officer made the entry in the case diary No.2 dated 1st December, 2022 and recorded the reasons for arresting the accused in the crime. The necessary satisfaction on the basis of the available material for the arrest was recorded in the said case diary.

05] Five arrested accused with the case diary, check list, as required by the directions of the Hon'ble Supreme Court of India and the remand application with the reasons for police custody were produced before the learned Judicial Magistrate First Class, Nagpur. The learned Judicial Magistrate First Class, Nagpur made the necessary inquiry with the accused about the ill-treatment, if any, meted out to them by police and on being satisfied with the seriousness of the crime and need for custodial interrogation,

remanded them to the police custody for five days. The investigation could not be completed. The Investigation Officer, therefore, applied for further police custody on 5th December, 2022. The learned Magistrate for the reasons recorded in the order, granted further police custody for 3 days. The Investigating Officer conducted the custodial interrogation and then applied for magisterial custody. The learned Magistrate remanded the accused persons to the magisterial custody. The above facts need to be borne in mind while deciding the rival contentions of the parties.

06] The petitioner filed this petition on 7th December, 2022 on multiple grounds. According to the petitioner on 29th November, 2022, her husband as usual had night shift duty at 8:00 p.m. He left the home for attending the duty. He was in her contact or approachable till 23:00 p.m. of that night. After that, he could not be contacted. In the normal circumstances, his duty would have been over at 8:00 a.m. of 30th November, 2022. He did not come back from duty. Her inquiry with the colleagues of her husband and other relatives, revealed that in the night of 29th November, 2022, her husband was kept at Dhantoli Police Station. She, therefore, went to Dhantoli Police Station, where she was allowed to meet her husband at 00:17 hrs. of 1st December,

2022. At that time, she was informed about the reasons for detention of her husband. It is stated that when she came to know about the apprehension of her husband, she wrote a letter to the Superintendent of Central Prison, Nagpur on 30th November, 2022 at 6:00 p.m. and made a request that the search of her husband be taken and she be informed accordingly. She also made an application under Section 97 of the Cr.PC on 1st December, 2022 in the Court of Judicial Magistrate First Class, Nagpur making the above grievance and prayed for production of her husband before the Court and to set him at liberty. According to the petitioner, her grievance went unheeded. It is her case that her husband was taken in custody by the police in the night of 29th November, 2022. He was not produced before the learned Magistrate within 24 hrs. from his detention. The detention was, therefore, illegal and in gross violation of the provisions of the law. The inquiry to that effect was not made by the learned Magistrate. The approach of the learned Magistrate on that count was casual and mechanical. It is further stated that the arrest of her husband was made by the Investigating Officer in gross violation of the provisions of Sections 41, 41-A and 60-A of the Cr.PC. The punishment provided for the offences is less than seven years. The record made available to the petitioner does not indicate the

reasons for recording the satisfaction to arrest her husband. According to her, there was no need of arrest. The detention was illegal.

07] It is further stated that the learned Magistrate, who granted the police custody, did not follow the mandate of the law. He did not conduct the inquiry on the touchstone of the parameters laid down from time to time. The learned Magistrate even rejected the request made by the learned advocate for the accused by filing the pursis for making the necessary inquiry with regard to the time of arrest etc. It is further stated that when the accused was remanded to magisterial custody, the approach was mechanical. No specific order was passed. The objections raised by the accused for his arrest and further detention were not taken into consideration at the stage of granting magisterial custody. It is submitted that the arrest of her husband was illegal and in gross violation of the provisions of the law. Similarly, it is contended that the order passed by the learned Magistrate granting police custody, was also illegal and in gross violation of the provisions of the law as well as the directions issued by the Hon'ble Apex Court from time to time. On these averments, she prayed for the reliefs as set out above.

08] The Investigating Officer has filed reply and opposed this petition. In the reply, the facts relating to the serious offences committed by the husband of the petitioner and others have been set out. In the reply, the chronology of the events from the time of lodging the report and taking them in custody for inquiry has been set out. It is contended that the crime was serious. The mobile phones were used for the commission of crime. The evidence to be collected in the crime was in the electronic form. More than one accused were involved in the commission of crime. Considering the serious nature of the crime and the official position having been used by the Prison Constables i.e accused Nos.6 and 8 for indulging in the crime, it was required to be thoroughly investigated. The arrest was, therefore, found necessary. The reasons for the arrest were recorded in the case diary as well as in the remand application submitted to the learned Magistrate. The learned Magistrate, on being satisfied with the seriousness of crime and *prima facie* involvement of the accused in the crime on the basis of the documents submitted by the Investigating Officer, opined that their custodial interrogation was necessary and accordingly granted the police custody. It is contended that while

effecting the arrest, the provisions of Sections 41, 41-A and 61-A of the Cr.PC were fully complied with. Similarly, the guidelines issued by the Hon'ble Supreme Court of India from time to time were fully complied with. The learned Magistrate was satisfied about the same. It is contended that this petition is filed with an ulterior motive. The intimation of the arrest of the accused was given to the petitioner and the cousin brother of the accused. This petition has been filed to pressurize the police, so that they should not go to the root of the matter and file watertight case against the husband of the petitioner and others.

09] I have heard Mr. N.B. Rathod, learned advocate for the petitioner and Mr. A.R. Chutke, learned APP for the State. Perused the record and proceedings.

10] The learned advocate for the petitioner submitted that the law permits the arrest in non-arrestable offence only in exceptional circumstances and that too by making a strict compliance with the conditions laid down in Section 41. It is submitted that in this case, the conditions laid down for arrest under Section 41 of the Cr.PC were not at all made out and

satisfied. The arrest was, therefore, illegal. The learned advocate submitted that the arrest of the husband of the petitioner by the Investigating Officer and the remand of the husband of the petitioner in police custody by Magistrate were in gross violation of the guidelines laid down initially in the case of ***Arnesh Kumar Vs. State of Bihar and Another [(2014) 8 SCC 273]*** and later on in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation and Another [(2022) 10 SCC 51]***. The learned advocate submitted that there was no material to record the satisfaction to effect the arrest in the crime by the Investigating Officer. The learned advocate submitted that the grounds put-forth for effecting the arrest were not sufficient. The learned advocate submitted that without complying with the mandatory provisions, the check-list was submitted and, therefore, that was not in compliance with the law laid down in the case of ***Arnesh Kumar*** (supra). The learned advocate submitted that the remand report submitted to the learned Magistrate is vague and conspicuously silent about the compliance of the mandatory provisions of Section 41 and also the directions issued by the Hon'ble Apex Court from time to time. The learned advocate submitted that on the basis of the vague and cryptic remand report, lacking the details and particulars required by the law, the learned Magistrate was not justified in authorising

the detention. The learned advocate further submitted that the husband of the petitioner was taken in custody on 29th November, 2022 itself, but he was not produced before the learned Magistrate within 24 hrs. The learned advocate submitted that this act on the part of the Investigating Officer has violated the fundamental right of the accused, provided under Articles 21 and 22 of the Constitution of India. The learned advocate further submitted that the learned Magistrate on the basis of the material placed on record by the Investigating Officer in support of the prayer for police custody, was required to accept the submissions advanced by the accused and release him on bail. The learned advocate submitted that at the time of the remand of the accused to the magisterial custody, the order was passed without recording the reasons. The learned advocate, therefore, submitted that initial arrest of the husband of the petitioner and his subsequent detention were in gross violation of the provisions of Section 41 of the Cr.PC and the law laid down in the cases of *Arnesh Kumar* (supra) and *Satender Kumar Antil* (supra) and, therefore, the order passed by the learned Magistrate, authorising his police custody is required to be set aside. The learned advocate further submitted that, therefore, the husband of the petitioner is entitled for bail and he may accordingly be released on bail.

11] The learned APP submitted that there is no substance in the petition filed by the wife of the accused. The learned APP submitted that considering the serious nature of the crime, the Investigating Officer was supposed to go to the root of the matter by conducting the thorough investigation. The learned APP submitted that the arrest of the husband of the petitioner was strictly in compliance with the provisions of Sections 41, 41-A and 60-A of the Cr.P.C. Learned APP submitted that considering involvement of more than one accused in the commission of crime and some of them being the jail officials, thorough investigation was necessary. It is submitted that such investigation was not possible without custodial interrogation. The learned APP further submitted that the mobile phones were used by the accused persons in the commission of crime and, therefore, it was necessary for the Investigating Officer to collect and examine the electronic evidence. The learned APP submitted that the material collected during the course of inquiry before effecting the arrest was *prima facie* sufficient to establish the complicity of the husband of the petitioner in the crime. The learned APP submitted that the husband of the petitioner and one more Prison Constable were the kingpin in the commission of crime. It is submitted that the crime in this case would not have been possible without the aid, support

and assistance of the husband of the petitioner and other prison constables. The learned APP submitted that during the investigation, evidence has been collected to show that the husband of the petitioner was accepting money for providing the services to the jail inmates and the friends and relatives of the jail inmates outside the jail. In order to substantiate the role of the husband of the petitioner, learned APP took me through the chats received by WhatsApp message on the phone of the husband of the petitioner and in turn the same chats forwarded by the husband of the petitioner to the relatives of the jail inmates. The learned APP submitted that the prayer for police custody was granted by the learned Magistrate on two occasions by recording the exhaustive reasons. The learned APP submitted that neither the Investigating Officer nor the learned Magistrate has committed any mistake. The learned APP in order to support his contention, pointed out the contemporaneous record. The learned APP submitted that failure to record the reasons while granting magisterial custody cannot be said to be illegality but a mere irregularity. The learned APP submitted that on production of the accused persons for the first time before the learned Magistrate, no complaint, oral or in writing by the accused about his arrest on 29th November, 2022 and the time of his arrest was made. The learned

APP, therefore, submitted that the contention of the petitioner that her husband was arrested on 29th November, 2022 is without substance.

12] The learned advocate for the petitioner has mainly relied upon the decision in the case of *Satender Kumar Antil Vs. Central Bureau of Investigation and Another (supra)*. He has also relied upon the decisions in the cases of *Arnesh Kumar Vs. State of Bihar and Another (supra)* and *Joginder Kumar Vs. State of U.P. and Others [(1994) 4 SCC 260]*. The decision in the case of *Arnesh Kumar (supra)* is considered in the case of *Satender Kumar Antil (supra)*.

13] The learned APP has also relied upon the above decisions. Considering the nature of the question required to be addressed in this petition, in my view, the law laid down in the case of *Satender Kumar Antil (supra)* would be required to be considered. The learned advocate for the petitioner and the learned APP, in order to substantiate their submissions, relied upon the provisions of Sections 41, 41-A and 60-A of the Cr.PC. In order to decide the issue involved in the matter, the law laid down in *Satender Kumar Antil's case (supra)* and the mandate of law, provided in Sections 41, 41-A and 60-A of the Cr.PC is required to

be considered. Sections 41, 41-A and 60-A of the Cr.P.C. reads thus:

“CHAPTER V
ARREST OF PERSONS

41. When police may arrest without warrant.—(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:-

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) 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; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured;

and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible

information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 42, no person concerned in a non- cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

41A. Notice of appearance before police officer.—(1) *[The police officer shall], in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.*

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply

with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

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60-A. Arrest to be made strictly according to the Code.—No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest.”

14] In the above context, it would be necessary to consider the guidelines laid down by the Hon’ble Apex Court in the case of ***Satender Kumar Antil*** (supra). The Hon’ble Apex Court has issued certain directions to the investigating agencies and the Courts. The Hon’ble Apex Court has discussed the arrest in cognizable offences, the mandate of Section 41 and effect of non-compliance of Section 41 of the Cr.PC while considering the bail application. The Hon’ble Apex Court has also issued directions to ensure that the Police Officers do not arrest the accused unnecessarily and when the accused on arrest is produced before the Court, the learned Magistrates do not authorise detention casually and mechanically. In this case, the Hon’ble Apex Court has

held that Sections 41 and 41-A of the Cr.PC are facets of Article 21 of the Constitution of India and has issued certain guidelines for avoiding unwarranted arrest and detention.

15] In order to consider the applicability of the proposition and the relevant guidelines to the case on hand from the decision of *Satender Kumar Antil* (supra), it would be appropriate to reproduce the relevant paragraphs namely paragraphs 24 to 32, which read thus:

“24. This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offence alleged is more than seven years, among other reasons.

25. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offence. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.

26. Section 41-A deals with the procedure for appearance before the police officer who is required to issue a notice to the person against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence, and arrest is not required under Section 41(1). Section 41-B deals with the procedure of arrest along with mandatory duty on the part of the officer.

27. On the scope and objective of Sections 41 and 41-A, it is obvious that they are facets of Article 21 of the Constitution. We need not elaborate any further, in light of the judgment of this Court in *Arnesh Kumar v. State of Bihar*, (SCC pp. 278-81, paras 7-12)

“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.

7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

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 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.

8. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57 CrPC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey:

8.1. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167 CrPC. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.

8.2. Before a Magistrate authorises detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused.

8.3. *The Magistrate before authorising detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording his satisfaction in writing that the Magistrate will authorise the detention of the accused.*

8.4. *In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.*

9. *...The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.*

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.

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.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.”

28. We only reiterate that the directions aforesaid ought to be complied with in letter and spirit by the investigating and prosecuting agencies, while the view expressed by us on the non-compliance of Section 41 and the consequences that flow from it has to be kept in mind by the Court, which is expected to be reflected in the orders.

29. Despite the dictum of this Court in Arnesh Kumar, no concrete step has been taken to comply with the mandate of Section 41-A of the Code. This Court has clearly interpreted Sections 41(1)(b)(i) and (ii) inter alia holding that notwithstanding the existence of a reason to believe qua a police officer, the satisfaction for the need to arrest shall also be present. Thus, sub-clause (1)(b)(i) of Section 41 has to be read along with sub-clause (ii) and therefore both the elements

of “reason to believe” and “satisfaction qua an arrest” are mandated and accordingly are to be recorded by the police officer.

30. It is also brought to our notice that there are no specific guidelines with respect to the mandatory compliance of Section 41-A of the Code. An endeavour was made by the Delhi High Court while deciding Writ Petition (C) No. 7608 of 2017 vide order dated 7-2-2018, followed by order dated 28-10-2021 in Rakesh Kumar v. Vijayanta Arya, wherein not only the need for guidelines but also the effect of non-compliance towards taking action against the officers concerned was discussed. We also take note of the fact that a Standing Order has been passed by the Delhi Police viz., Standing Order No. 109 of 2020, which provides for a set of guidelines in the form of procedure for issuance of notices or orders by the police officers. Considering the aforesaid action taken, in due compliance with the order passed by the Delhi High Court in Amandeep Singh Johar v. State (NCT of Delhi) dated 7-2-2018, this Court has also passed an order in Abhyanand Sharma v. State of Bihar dated 10-5-2021 (sic 10-5-2022) directing the State of Bihar to look into the said aspect of an appropriate modification to give effect to the mandate of Section 41-A. A recent judgment has also been rendered on the same lines by the High Court of Jharkhand in Mahesh Kumar Chaudhary v. State of Jharkhand dated 16-6-2022.

31. Thus, we deem it appropriate to direct all the State Governments and the Union Territories to facilitate Standing Orders while taking note of the Standing Order issued by the Delhi Police i.e., Standing Order No. 109 of 2020, to comply with the mandate of Section 41-A. We do feel that this would certainly take care of not only the unwarranted arrests, but also the clogging of bail applications before various Courts as they may not even be required for the offences up to seven years.

32. We also expect the courts to come down heavily on the officers effecting arrest without due compliance of Section 41

and Section 41-A. We express our hope that the Investigating Agencies would keep in mind the law laid down in Arnesh Kumar, the discretion to be exercised on the touchstone of presumption of innocence, and the safeguards provided under Section 41, since an arrest is not mandatory. If discretion is exercised to effect such an arrest, there shall be procedural compliance. Our view is also reflected by the interpretation of the specific provision under Section 60-A of the Code which warrants the officer concerned to make the arrest strictly in accordance with the Code.”

16] In the case of **Joginder Kumar** (supra), the Hon’ble Apex Court in paragraph 20 has observed as follows:

“20. In India, Third Report of the National Police Commission at p. 32 also suggested:

“An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.

(ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines

....”

The above guidelines are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. 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.”

17] The decisions in the cases of **Arnesh Kumar** (supra) and **Satender Kumar Antil** (supra) have been considered by the Division Bench of this Court in the case of **Chanda Deepak Kochhar Vs. Central Bureau of Investigation and connected matter** [Criminal Writ Petition (Stamp) No.22494/2022, decided on 9th

January, 2023, wherein it is held that the arrest, which is made in gross violation of the provisions of law and particularly the non-compliance of the mandate of Sections 41, 41-A and 60-A of the Cr.PC will **inure** the benefit of the accused warranting his release on bail. It is held in this case that not only the Investigating Officers, but the Judicial Officers cannot overlook the mandate of the law as well as the dicta laid down in the cases of *Arnesh Kumar* (supra) and *Satender Kumar Antil* (supra).

18] In view of the facts and the law laid down in the decisions (supra), I am required to consider three primary questions:

- i. Whether there was failure on the part of the Investigating Officer to produce the accused before the Jurisdictional Magistrate within 24 hrs. from the time of his arrest in the crime?
- ii. Whether the arrest of the husband of the petitioner was contrary to the provisions of Sections 41, 41-A and 60-A of the Cr.PC and the law laid down in the case of *Satender Kumar Antil* (supra) and as such illegal?
- iii. Whether the order passed by the learned Magistrate granting police custody was casual, mechanical and as such

in the breach of the provisions and the law laid down in the cases of *Arnesh Kumar* (supra) and *Satender Kumar Antil* (supra)?

19] As far as the first point is concerned, the learned advocate as well as the learned APP took me through the record. The chronology of the events and dates from the time of taking the accused persons in custody by the Investigating Officer till their production before the learned Magistrate needs to be stated. It is as follows:

Date & Time	Investigation in the crime
30.11.2022 17:15 hours	Complainant – Kishor Pavarte, P.I. Crime Branch, Nagpur City submitted report to P.S. Dhantoli, Nagpur City.
30.11.2022 18:06 hours	Accordingly, Crime No.332/2022 for the offences punishable under Sections 420, 465, 468, 471 of the IPC r/w Section 42 & 45 of the Prisons Act, 1894 was registered.
30.11.2022 19:00 hours	The complainant has brought the accused namely (1) Shrikant Thorat, (2) Gopi Parade, (3) Rahul Mendhekar at Police Station. However, as they were not medically examined, complainant was asked to conduct their medical examination and submit report. Further, suspected accused namely Ajinkya Rathod and Prashant Rathod (Prison Constable) were found involved in crime and brought to Police Station.
30.11.2022	During enquiry, it revealed that other accused

19:50 hours	were also involved in the crime and so offence under Section 120-B of IPC was added and station diary entries were taken.
01.12.2022 00:17 hours	The suspected accused namely Ajinkya Rathod and Prashant Rathod (Prison Constable) were enquired and at that time, the wife of Ajinkya Rathod namely Sadhana Rathod (petitioner) had came to Police Station. She was given information about the offence.
01.12.2022 1:00 hours	The complainant brought the accused namely (1) Shrikant Thorat, (2) Gopi Parade, (3) Rahul Mendhekar at Police Station after conducting their medical examination with report.
01.12.2022 01:05 to 01:45 hours	The personal search panchnama of the accused namely (1) Shrikant Thorat, (2) Gopi Parade, (3) Rahul Mendhekar was conducted.
01.12.2022 01:51 hours	Entries in respect of the mobile seized during personal search of the accused namely (1) Shrikant Thorat, (2) Gopi Parade, (3) Rahul Mendhekar was taken.
01.12.2022 01:57 hours	The accused namely (1) Shrikant Thorat, (2) Gopi Parade, (3) Rahul Mendhekar were arrested and station diary entry to that effect was taken.
01.12.2022 02:00 to 05:30 hours	The suspected accused namely Ajinkya Rathod and Prashant Rathod (Prison Constable) were enquired into detail.
01.12.2022 06:50 to 07:40 hours	The mobile were seized during the personal search panchnama of the suspected accused Ajinkya Rathod and Prashant Rathod (Prison Constable) and entries to that effect were taken into station diary.
01.12.2022 07:52 hours	The medical examination of the suspected accused namely Ajinkya Rathod and Prashant Rathod (Prison Constable) was conducted.
01.12.2022 09:26 hours	The suspected accused namely Ajinkya Subhash Rathod and Prashant Dagaduji Rathod (Prison

	Constable) were arrested and station diary entry was taken. The intimation of arrest of the accused Ajinkya Rathod (prison constable) was given to his cousin brother Vaibhav Rathod who was present at Police Station alongwith the wife of accused Ajinkya Rathod in the mid-night hours with other persons. Further, the intimation of arrest of accused Ajinkya Rathod (prison constable) was immediately given to his employer i.e. the Jail Superintendent, Central Prison, Nagpur by the written communication.
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20] Admittedly, accused Ajinkya is serving as Prison Constable at Central Prison, Nagpur. He was assigned the duty at the entrance gate of the jail. The officials of the Crime Branch, Nagpur had received the secret information about this crime and therefore, the inquiry was started by the Crime Branch on 29th November, 2022. The inquiry revealed the role of the number of the accused, including accused Ajinkya in the commission of serious crime. It needs to be stated that the enquiry by the Crime Branch, Nagpur revealed that the husband of the petitioner and other police constable were the kingpins in the crime. The enquiry revealed that without their aid, support and assistance, the remaining accused could not have committed this crime. The report was lodged by Shri Kishor Parvate, Police Inspector attached to Crime Branch, Nagpur City on 30th November, 2022 at 17:15

hrs. In the report, the nature of the crime committed by the accused revealed during the inquiry and the specific role attributed to all the accused has been stated. The role of the husband of the petitioner has been categorically stated in the report. Shri Kishor Parvate, Police Inspector attached to Crime Branch, Nagpur City had brought the accused to the Dhantoli Police Station at the time of lodging of the report. The accused were, therefore, subjected to the inquiry by the Investigating Officer in the crime. It is undisputed that when the husband of the petitioner was taken to the Dhantoli Police Station, the wife of the accused went there on 1st December, 2022 at 00:17 hrs. She was given the information about the offence committed by her husband and the inquiry proposed to be made with her husband.

21] In order to substantiate the contention that her husband went missing from 29th November, 2022, she has placed heavy reliance on her letter addressed to the Superintendent of Central Prison, Nagpur dated 30th November, 2022, prepared at 6:00 p.m. It is to be noted that she has not placed on record any reply received from the Superintendent of Central Prison, Nagpur to this letter. She has not placed on record any document or the register from the Central Prison, Nagpur to show that her husband was not

on duty from 29th November, 2022 at 8:00 p.m. to 8:00 a.m. of 30th November, 2022. The petition is silent about her inquiry with the Superintendent of Central Prison, Nagpur. It is to be noted that in the ordinary course of nature, when her husband was on duty, on the given date and time as stated above, she was supposed to go to the Central Prison and make inquiry. No statement has been made in the petition to explain this fact. On the basis of the letter dated 30th November, 2022, it can be seen that she had made a grievance about the missing of her husband on 30th November, 2022 at 6:00 p.m. In the letter, the petitioner has not stated that she had been to the Central Jail, Nagpur to make inquiry with the Jail Superintendent about her husband before drafting this letter. If she had made such inquiry, then she would have specifically stated this fact in the letter. She was also required to explain this fact in her petition. It is, therefore, apparent that the petitioner had an opportunity to ventilate her grievance appropriately before writing this letter. The Superintendent of Jail has not been made a party in this petition. The production of the contemporaneous record from the jail would have substantiated her contention, which she had failed to produce. It is pertinent to note that the Investigating Officer immediately after arrest of the husband of the petitioner on 1st December, 2022 at 9:26 hrs. intimated the Superintendent of

Jail by written communication.

22] Accused Ajinkya being Police Constable, attached to the jail, cannot be said to be ignorant about his rights. He was produced before the learned Judicial Magistrate, First Class, Nagpur by the Investigating Officer on 1st December, 2022 at 3:35 p.m. The learned Magistrate made inquiry with the accused. The accused did not make any complaint of ill-treatment at the hands of the police. It is the case of the petitioner that her advocate filed the pursis before the learned Judicial Magistrate, First Class at the time of the remand proceeding on 1st December, 2022 and pointed out that the thorough inquiry is required to be made by the Court with regard to the illegal detention, violation of rights guaranteed under the Constitution of India. The learned Magistrate has made the reference to this pursis in paragraph 4 of the remand order. The perusal of the order indicates that when the learned Magistrate asked the advocate to point out the basis or foundation for certain facts stated in the application, the advocate could not point out the same. It is to be noted that, at this stage, the accused through his advocate could have placed on record all the facts, which have now been stated in the petition, with regard to the date and time of his actual detention. The perusal of the pursis would show that it is

conspicuously silent about the date and time of actual detention of the accused. It is to be noted that, if the accused was taken in custody as stated by the petitioner, then the accused through his advocate ought to have stated the same with great details in this pursis. This was the proper place and time for him to ventilate his grievance. The perusal of the pursis would show that it is nothing short of the guidance to the learned Magistrate as to how he should conduct the proceeding. The accused in this pursis had not stated the concrete facts with regard to the circumstances, which led to his apprehension when he was on duty, the actual time of his apprehension and the actual time of his detention by the officials of the Crime Branch. The accused was represented by the advocate. Learned advocate would not have missed such an important fact while preparing the pursis. The accused could have made a grievance of failure on the part of the learned Magistrate to discharge his duty, if the learned Magistrate had failed to make an inquiry despite mentioning the above circumstances and the date and time of his actual detention by the officials of the Crime Branch in the pursis. The accused, who is the Prison Constable, on being asked by the learned Magistrate ought to have narrated in detail the events, which led to his arrest, the time of arrest and the place from where he was actually picked out. It is not the grievance

of the petitioner that her husband was not allowed by the learned Magistrate to speak at the time of the inquiry before the learned Magistrate. In my view, this is one vital circumstance, which goes against the case of the petitioner.

23] The petitioner is seeking support to this point on the basis of the application made under Section 97 of the Cr.PC on 1st December, 2022. This application was not placed before the learned Magistrate by the learned advocate appearing for the accused at the time of remand. Similarly, the learned Magistrate was not apprised about this application. There is no explanation in the petition as to why the copy of this application was not attached to this pursis. The order passed by the learned Magistrate indicates that this fact was not pointed out to the learned Magistrate, when the remand application was considered by the learned Magistrate. The reply was filed by the Investigating Officer to this application. This application was ultimately rejected by the learned Magistrate on 5th December, 2022. On the basis of the documents placed on record, the petitioner has not been able to satisfy that her husband was taken in custody on 29th November, 2022 at 23:00 hrs. The contemporaneous record placed before this court is not sufficient to accept this contention. The petitioner has admitted that she was

given information by the Investigating Officer about the involvement of her husband in the serious crime at 00:17 hrs of 1st December, 2022. This fact is supported by contemporaneous record. General diary entry dated 1st December, 2022 at 1:06 hrs. clearly indicates that the custody of the accused persons was handed over to the Investigation Officer by informant. The information of the same was given to the Jail Administration as well as to his relatives. This general diary entry would show that all the accused were handed over after inquiry by the Crime Branch officials to the Investigating Officer at the time of lodging of the report on 30th November, 2022 at 18:06 hrs. The next station diary entry reveals that the inquiry was made by the Investigating Officer with the husband of the petitioner. His mobile was seized. The station diary with regard to the seizure of the mobile of the husband of the petitioner is dated 1st December, 2022 at 07:47 hrs. After the preliminary inquiry, his involvement in the crime was fully established to the satisfaction of the Investigating Officer. Therefore, he was arrested in this crime on 1st December, 2022 at 09:26 hrs. This fact has been supported by the station diary entry as well as the medical examination certificate of the husband of the petitioner before effecting the arrest. The documentary evidence does not, therefore, permit me to accept the submission advanced

by the learned advocate for the petitioner that her husband was actually arrested on 29th November, 2022 at 23:00 hrs. I, therefore, conclude that there was no violation of his legal as well as constitutional rights.

24] The next important point is with regard to the non-compliance of the mandatory provisions of Sections 41, 41-A and 60-A of the Cr.PC. It is undisputed that the punishment provided for all the offences mentioned in the FIR, is less than seven years. Therefore, the provisions of Section 41 of the Cr.PC are applicable to the case of the accused. It would, therefore, be necessary to see whether there was material on record to satisfy the Investigating Officer that there is reason to believe or suspect that the husband of the petitioner has committed offence and there is necessity for his arrest. It is also necessary to see the reasons recorded in writing by the Investigating Officer, while making the arrest. It is also necessary to see whether the reasons are sufficient to establish the compliance of the provisions of Sections 41, 41-A and 60-A of the Cr.PC. It is held in the case of ***Satender Kumar Antil*** (supra), that when arrest is made contrary to the mandate of Section 41 of the Cr.PC, the same

has to be termed as illegal and in gross violation of the right and liberty of the accused.

25] It is the case of the petitioner that the reasons recorded to effect the arrest on the basis of so-called *prima facie* satisfaction of the involvement of the accused in the commission of crime are flawed on more grounds than one. It is to be noted that whether the material or information available with the police was sufficient to form reasonable belief or suspect commission of offence by the accused persons, is a question of fact and as such has to be examined on the basis of the material and the record placed before the Court. Similarly, the question whether there were sufficient reasons for effecting the arrest or not, is also a question of fact and has to be addressed on the basis of the facts and materials placed on record. The provisions of the law are, therefore, required to be applied to the facts placed on record to see whether there was compliance or non-compliance of the provisions.

26] It would be necessary to scrutinize the material relied upon by the prosecution. It is to be noted at the outset that the learned Magistrate had an occasion to examine this record. The learned Magistrate on the basis of record was satisfied that there

was compliance of the mandatory provisions of Section 41, 41-A and 60-A of the Cr.PC and the guidelines laid down by the Hon'ble Apex Court from time to time. The learned APP placed on record the papers of the investigation. There is ample material on record that the information of the arrest of the accused was given to the petitioner and the cousin brother of the accused. The Case Diary No.2 dated 1st December, 2022 is relevant in this context. The Investigating Officer in this case diary has narrated in brief the nature of the offence, the involvement of the accused persons in the commission of crime and the specific role of the husband of the petitioner revealed by that time in the commission of this crime. It was also stated in the report that the crime is very serious and needs thorough investigation. The Investigating Officer recorded the satisfaction in this case diary about the *prima facie* involvement of husband of the petitioner in the commission of crime. The Investigating Officer has also recorded the reasons for the arrest of the accused in this crime. The reasons for arrest stated are (i) that if the accused are not arrested in the crime, then the possibility of their indulgence in the similar crime cannot be ruled out, (ii) considering the *modus operandi* of the accused, the evidence is required to be collected by conducting the investigation and (iii) the accused if not arrested can destroy, tamper with or

threaten the prosecution witnesses. Recording these reasons, the accused including the husband of the petitioner were arrested. It has been specifically mentioned in this diary that the information of the arrest was given to the relatives of the accused persons.

27] It is also stated in the report that the offences were committed by the accused at the sensitive place like Central Prison Nagpur and, therefore, the detailed and thorough investigation by undertaking their interrogation is required. The question, therefore, is, whether sufficient reasons are recorded to form reasonable belief or suspect the involvement of the husband of the petitioner in commission of crime ? The next important question that needs to be considered is whether the material on record was sufficient to form an opinion for effecting arrest of the husband of the petitioner in the crime ? I have narrated the facts in detail. It is *prima facie* seen that the inmates of the jail were communicating with the relatives and the erstwhile inmates of the jail through the husband of the petitioner. There there is *prima facie* material to indicate that the husband of the petitioner was involved in transmitting the important information from the inmates of the jail to the relatives and friends of the inmates of the jail outside the jail. The chits received on his phone from the inmates or the relatives of

the inmates were forwarded through WhatsApp by the husband of the petitioner. In the chits, there is reference that he was paid gratification or consideration for the same. It is to be noted that without the active involvement of the jail personnel, it was not possible for the inmates of the jail to commit such offence. Therefore, in my view, keeping in mind the facts established on record, the accused No.6 the husband of the petitioner and the accused No.8, who are the prison constables, were the main accused in this case. The material and the information placed on record clearly indicate that the involvement of the accused persons in a serious crime was revealed. This material was sufficient to form a reasonable belief with regard to their involvement in the commission of serious crime. It is to be noted that the personnel of jail, if act and behave in such a manner, then it is a cause of concern. The indulgence in such crime by the jail personnel, when comes to fore, needs to be inquired into or investigated. By applying any standard, the role of the Police Constables cannot be said to be minor or negligible. In the fact situation, I am of the view that the Investigating Officer was justified in contending that for the purpose of thorough investigation of such a crime and that too on account of involvement of the jail personnel, arrest of the accused was necessary. The Investigating Officer on the basis of

the material *prima facie* recorded his satisfaction with regard to his involvement in the crime. The reasons recorded and supported by the material are sufficient to effect the arrest of the husband of the petitioner in such a serious crime. I do not see any reason to doubt and question the satisfaction recorded by the Investigating Officer on this count.

28] It may not be out of place to mention that the Court has to balance the liberty of the accused as well as the societal interest. It is the responsibility of the police machinery to ensure the order in the society. Such crime by any standard has wide ramifications. In such a crime, the law is thrown to the wind by the persons in the position as the guardian of the basic rights of the society. If the guardian of the society acts in such a manner, then his contention with regard to the emphasis on his liberty and right needs to be weighed. The thorough investigation is the right and prerogative of the Investigating Officer. In this case, the mobile phones were used for communication. It is not out of place to mention that the investigation becomes more complex when there is use of electronic gadgets in commission of a crime. It is to be noted that custodial interrogation can provide a lead to the Investigating Officer to go to the root of the crime. In my view, as long as the

Investigating Officer comply with the mandate of the law, there shall be no reason to scuttle the direction of the investigation and deny the opportunity to the Investigating Officer to conduct the thorough investigation and collect the best possible evidence in the crime. In my view, this fact cannot be overlooked in this case. If this fact is kept in mind and considered in juxtaposition with the reasons given in the case diary by the Investigating Officer for the arrest of the accused, I am of the view that no fault could be found with the Investigating Officer. Therefore, in my view, in this case, there was *prima facie* material for the Investigating Officer to be satisfied with regard to the involvement of the accused in the commission of serious crime. The reasons stated, by complying all the mandates, are sufficient to accept the case of the prosecution that the arrest of the accused in the crime was necessary. The reasons recorded by the Investigating Officer, in the form of grounds of arrest, satisfied the basic requirements laid down in Section 41(1)(b)(ii) (a) to (e) of the Cr.PC. Therefore, I am not inclined to accept the submissions advanced on this point by the learned advocate for the petitioner.

29] This would take me to the next point namely the role of the learned Judicial Magistrate First Class, Nagpur while dealing

with the remand application and granting the police custody. It is necessary to see whether the learned Judicial Magistrate First Class has overlooked the mandate of the law as well as the law laid down by the Hon'ble Supreme Court in the cases of ***Arnesh Kumar*** (supra) and ***Satender Kumar Antil*** (supra). It is settled position that before Magistrate authorises detention under Section 167 of the Cr.PC, he has to first satisfy that the arrest made is legal and in accordance with law and all the constitutional rights of the persons arrested are satisfied. If it is found by the learned Magistrate that the arrest effected by the Police Officer does not satisfy the requirements of Section 41 of the Cr.PC, the learned Magistrate is duty bound not to authorise his further detention and release the accused. The same by no stretch of imagination could be said to be an empty formality. The learned Magistrate on production of the arrested accused is duty bound to consider whether specific reasons have been recorded for effecting the arrest and also whether those reasons are relevant to reach at reasonable conclusion that one or the other conditions stipulated in Section 41(1)(b)(ii)(a) to (e) of the Cr.PC are attracted. It needs to be stated that in view of the dicta laid down in the case of ***Arnesh Kumar*** (supra), to this limited extent, the concerned Court will have to make a judicial scrutiny. In order to deal with this point, it would be necessary to

go through the order passed by the learned Judicial Magistrate First Class, Nagpur on 1st December, 2022, whereby the accused were remanded to police custody for five days. The learned Judicial Magistrate First Class, Nagpur passed the reasoned order. The perusal of the order would show that the learned Magistrate took into consideration the remand papers and the case diary. The learned Magistrate found that there was material to substantiate the satisfaction recorded by the Investigating Officer with regard to the *prima facie* involvement of the accused persons in the crime. The learned Magistrate, as can be seen from the order, was satisfied that the crime in question was serious crime. It is also seen that the learned Magistrate was satisfied with the grounds and the reasons stated for arrest as well as seeking police custody. The perusal of the order would further show that the learned Magistrate granted an opportunity of hearing to the accused through their advocates before passing the order. The submissions advanced by the learned advocate appearing for the accused and the learned APP for the State, the remand applications and other papers were considered. In my view, by applying any standard, the order passed by the learned Magistrate cannot be said to be a flawed order. The learned Magistrate by this order put a stamp of approval to the satisfaction recorded by the Police Officer with regard to the *prima facie*

involvement of the accused persons in the crime and to the grounds for their arrest put-forth by the Investigating Officer for police custody. In my view, on the basis of the material on record, it is not possible to conclude that the exercise undertaken by the learned Magistrate was casual and mechanical.

30] The perusal of the order, on the other hand, reveals the application of judicious mind by the learned Magistrate. Same is the case with the order dated 5th December, 2022, whereby the accused persons were remanded for police custody till 8th December, 2022. The perusal of both the orders passed by the learned Magistrate would show that the learned Magistrate took into consideration the serious nature of the crime and the need for thorough and detailed investigation in the crime of such magnitude. Therefore, I do not see that there was any breach of violation of the provisions of the law as well as the dicta in the cases of *Arnesh Kumar* (supra) and *Satender Kumar Antil* (supra).

31] The next point that needs to be addressed is with regard to the nature of the order passed by the learned Magistrate while remanding the accused person to the magisterial custody. It is seen on perusal of the record that the Investigating Officer after expiry of three days police custody, prayed for judicial custody. The

learned Magistrate, therefore, had two options either to remand them to judicial custody or to release them on bail. It is to be noted that considering the seriousness of crime, the learned Magistrate was not inclined to grant the bail and, therefore, they were remanded to judicial custody. It is further pertinent to note that the application made by the husband of the petitioner for bail was rejected by the learned Magistrate on merits. This fact would fortify the satisfaction of the learned Magistrate while remanding the accused to the magisterial custody and not granting the bail. It is further pertinent to note that the application made by the accused before the Sessions Court for bail was also rejected. It is pertinent to mention that before the Sessions Court, the ground of non-compliance of the mandatory provisions of the Cr.PC and the dicta laid down by the Hon'ble Supreme Court in the cases of *Arnesh Kumar* (supra) and *Satender Kumar Antil* (supra), was pressed into service. The same was dealt with. The submission was rejected by holding that there was compliance of the same. In my view, therefore, on this count, no further dilation would be required.

32] In the facts and circumstances, I am of the view that there is no substance in the petition. The proposition of the law

laid down in the judgments relied upon by the learned advocate for the petitioner, does not support his contention.

33] The petition, therefore, deserves to be dismissed and is accordingly **dismissed**. Rule is discharged.

(G. A. SANAP, J.)

Vijay