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

CRIMINAL WRIT PETITION NO. 467 OF 2012

Arun Thomas Ferreira,

PETITIONER

Age 39 years,
R/o 17-A, St. Martins Road,
First Floor, Flat No.7,
Bandra, Mumbai 400050

// V E R S U S //

1. **State of Maharashtra,**

RESPONDENTS

Through Home Secretary,
Mantralaya, Mumbai-400032

2. **Superintendent of Police**

Gadchiroli District Police
Headquarters, Gadchiroli

3. **Officer-In-Charge,**

Purada PS. District Gadchiroli

4. **Shri M.R. Tarone,**

Police Sub-Inspector,
Purada P.S. Dist. Gadchiroli

5. **Shri M.C. Meshram,**

Police Sub-Inspector,
Purada P.S. Dist. Gadchiroli

6. **Prison Superintendent,**

Nagpur Central Prison,
Wardha Road, Nagpur 440020

7. **Shri Yogesh Patil,**

Junior Class II,
Nagpur Central Prison,
Nagpur 440020

8. **Officer-in-charge,**

Dhantoli Police Station, Nagpur

9. **Shri Satishsingh Rajput,**

Police Inspector,
Dhantoli P.S. Nagpur

10. **Shri Sudhakar Chavhan,**

- Police Sub Inspector,
Dhantoli P.S. Nagpur
11. **Shri Manoj Gabhne,**
Police Sub Inspector,
Dhantoli P.S. Nagpur
12. **Shri Satish Hindurao Shinde,**
PSI Local Crime Branch,
Gadchiroli
At present P.S. Gondia City,
Gondia

Mr. Pradip B. Mandhyan, Advocate & Mr. Aakash Sorde, Advocate
for the petitioner.

Mr. M.J. Khan, Addl. PP for the respondent /State.

CORAM : **URMILA JOSHI PHALKE &**
RAJ D. WAKODE, J.J.

JUDGMENT RESERVED ON:-28.09.2026
JUDGMENT PRONOUNCED ON:-27.10.2026

J U D G M E N T : (Per Urmila Joshi Phalke, J.)

1. Heard.
2. **Rule.** Rule made returnable forthwith. Taken up
for final disposal with the consent of learned counsel for the
parties.
3. The petitioner seeks a declaration that his arrest is
illegal and violates the fundamental right under Article 21 of
the Constitution of India. He was arrested on 08.05.2007 in

connection with Crime No.149/2007 of Dhantoli Police Station and subsequently in six other crimes registered at Gondia and one crime at Chandrapur.

4. He came to be acquitted after trial in all eight cases. The trial in the last case was completed on 23.09.2011 by Extra Joint Adhoc Additional Sessions Judge, Chandrapur and was released on executing bail bond under Section 437(A) of the Criminal Procedure Code. Accordingly, he executed the bail bond on 26.09.2011. As per order of the Court, he requires to be released on 27.09.2011, therefore, his mother along with his brother came to Nagpur to take him back and met him and informed entire procedure is followed and bond is executed. It is alleged by the petitioner that jail authorities intentionally delayed the procedure and released him about 2.30 p.m. on 27.09.2011. As soon as petitioner came out from the jail a group of unknown civilian by shutting his mouth, lifted him and taken him in a un numbered vehicle. Six of those unknown persons carried him which was an act of forcible abduction. The said act of

abduction was witnessed by his brother, mother and advocate. Though his advocate and associates stepped forward to enquire where the petitioner is being taken but none of them responded. On the contrary, his advocate was threatened. Immediately at about 15.30 p.m. his advocate made complaint to PSI, Dinesh Zhambre at Dhantoli Police Station.

5. The petitioner contended that subsequently he came to know that respondent No.2-Superintendent of Gadchiroli Police had sent one Mr. Satish Shinde, PSI, Local Crime Branch, Gadchiroli to enquire about the petitioner. PSI Shinde and other staff of Local Crime Branch, on learning about release of petitioner from jail, took the petitioner in custody on 27.09.2011 at 2.30 p.m. and took him to Desaignanj Police Station, Gadchiroli. As per contention of the petitioner alleged custody was illegal. The action of taking him in custody without following due process of law. At around 17.30 p.m. petitioner was informed that he was arrested in Crime No.14/2007 of Purada Police Station

without informing him any details of the said crime or the grounds of arrest. He was not shifted to Purada Police Station, Gadchiroli and detained in Desaiganj Police Station. On 28.09.2011 at about 4.30, he was produced before Judicial Magistrate First Class, Kurkheda. Thus, his production before the Magistrate was also not within 24 hours, since he was taken into custody at about 2.30 p.m. on 27.09.2011. Respondent No.4 -PSI Purada Police Station placed remand papers seeking police custody on the ground that petitioner was absconder and had been arrested at 7.30 p.m. on 27.09.2011. Despite the petitioner has filed written application stating the facts that in nine cases he faced trial and had been discharged or acquitted. During period of 4 years and four months as an under trial prisoner up to 27.09.2011, and also the fact of abduction, the Judicial Magistrate First Class, Kurkheda ignored the serious allegations made by him and granted two days police custody remand. On 30.09.2011 petitioner shown to be arrested in another Crime No.23/2007 of Purada Police Station. In subsequent crime also neither he was informed the nature of

accusation in the said crime nor the grounds of arrest communicated to him. On 03.10.2011 after he was remanded to judicial custody he was again sent to Nagpur Central Prison. It is further contention of the petitioner that neither in his arrest form nor anywhere else there is an explanation by the Investigating Agency to show that how the petitioner was shown to be absconding for many years when he was in jail. There was absolutely no compliance under Sections 41 or 55 of Criminal Procedure Code. Though the arrest form shows that his father was informed regarding his arrest but his father or any family member never informed regarding his arrest and for all above these grounds his arrest is illegal.

6. Heard learned counsel for the petitioner. He reiterated the said contentions and submitted that there is total non compliance of provisions of Sections 41, 48 and 50 of the Code of Criminal Procedure. The grounds of arrest never communicated to the present petitioner. Despite the fact that petitioner was in jail since 2007 to 2011, intentionally he was shown to be absconding.

7. Respondent to ensure that his arrest is legal and duly executed in view of the mandatory provisions under Sections 46 and 50 of the Code of Criminal Procedure. Without any transit warrant he was taken into custody in other crime. The manner in which the petitioner was taken into custody was completely illegal. There is absolutely no record to show that respondent No.2 directed PSI Shinde of Crime Branch to enquire about the petitioner. There is no station diary entry or GD entry showing that he was directed to take the present petitioner in custody. Thus, there is a gross violation of Supreme Court decisions in catena of decisions including *D.K. Basu vs. State of West Bengal* reported in *AIR (1997) SC 610*. He submitted that it is a gross violation of subsequent judgments of the Supreme Court including *Vihaan Kumar Vs. State of Haryana* reported in *(2025) 5 SCC 799*, *Prabir Purkayastha vs State (NCT Of Delhi)* reported in *(2024) 8 SCC 254* and *Mihir Rajesh Shah vs. State of Maharashtra* reported in *(2025) SCC OnLine SC 2356*.

8. Per contra, learned APP strongly opposed the said contentions and submitted that as per the procedure established by law and with due process, the petitioner was arrested. The information about the arrest of the petitioner was given to his advocate Surendra Gadling on telephone at the same time when he was arrested after due enquiry at Police Station Desaiganj. The petitioner was nowhere shown absconding in the present crime as the identity was disclosed in the month of September 2011 itself and thereafter he was arrested. As per the Sana entry at Police Station Dhantoli oral information was given to his advocate. He submitted that in the month of May, 2011 three naxalites have surrendered before Superintendent of Police Gadchiroli namely Bandu @ Mohan Kumre, Lalu @ Sukke and Manvati @ Savita. Thus, naxalites were enquired and during their interrogation the name of the present petitioner was revealed showing his involvement in two crimes bearing No.14/2007 and 23/2007. Their statements were recorded. Therefore, the petitioner was taken into custody for inquiry and after inquiry he was arrested. He was required for interrogation in crimes. In

crime No.14/2007 and 23/2007 as offences were cognizable and non bailable, therefore, when petitioner was released from Central Prison, PSI Shinde, Local Crime Branch, Gadchiroli had taken petitioner in custody and as the transit period from Nagpur to Desaiganj was about three hours, the said petitioner was taken to Desaiganj Police Station wherein after due enquiry he was arrested at about 5.30 p.m. and on the next day within 24 hours he was produced before the Judicial Magistrate First Class Kurkheda. Thus, he was arrested after due enquiry. He further submitted that as the petitioner was required in the crime of Purada Police Station Gadchiroli, Superior Officer of respondent No.2 had ordered to visit Central Prison, Nagpur to make enquiry about the petitioner and to take him in custody. Accordingly, respondent No.12 i.e. PSI Shinde visited the Central Prison, Nagpur and enquired about the petitioner and came to know that he would be released on same day from the jail. He conveyed the said message by telephone to his superior. On the direction of his superior, petitioner was taken into custody to bring him at Police Station Desaiganj, Gadchiroli. As the

petitioner was known to be as a senior hard core member of naxal group, it was dangerous to take him in custody at public place. Accordingly, when he was released from jail, the respondent No.12 PSI Shinde had tried to give his identity to him but the petitioner had tried forcibly to fled away from the spot. Therefore, he was taken in custody with the help of sufficient police force. Considering the petitioner is known as a senior hard core member of naxale group and to bring him safely at Desaiganj Police Station, Gadchiroli, number plate of vehicle was removed for some time and his staff were in civil dress as the respondent No.12 was posted in Local Crime Branch. Thus, learned APP submitted that the relevant entries are already taken by the Investigating Officer regarding taking the petitioner in custody. His relatives were informed and thus, no illegality is committed by the Investigating Officer.

9. In support of his contentions he placed reliance on the decisions of Hon'ble Apex Court in the case of *D. Bhuvan Mohan Patnaik and ors. vs. State of Andhra Pradesh*

and others reported in (1975) 3 SCC 185, *Criminal Appeal No.1766 of 2009 decided on 14.09.2009, Subhashree Das vs. State of Orissa* reported in *AIROnline 2012 SC 447* and *Lalita Kumari vs. Government of Uttar Pradesh and ors.* reported in (2014) 2 SCC.

10. Before entering into merits of the matter, we would like to refer the definition of ‘arrest’.

"Arrest : To deprive a person of his liberty by legal authority. Taking, under real or assumed authority, custody of another for the purpose of holding or detaining him to answer a criminal charge or civil demand."

11. This term “arrest” is explained by the Full Bench of Madras High Court in *Roshan Beevi and others* referred above wherein the Madras High Court after considering the various dictionary meanings to the word ‘arrest’ observes that “Arrest involves the authority to arrest, the assertion of that authority with the intent to effect an arrest, and the restraint of the person to be arrested. All that is required for an 'arrest' is some act by officer indicating his intention to detain or take person into

custody and thereby subject that person to the actual control and will of the officer, as formal declaration of arrest is required.”

12. By referring '**A Dictionary of Law**' by L. B. Curzon (1979) gives the meaning of the word 'arrest' at page 22, as follows :

"To restrain and detain a person by lawful authority"

13. Thus, after considering the various definitions in various dictionaries ***Full Bench of Madras High Court*** held in para No.16 as under:

“16. From the various definitions which we have extracted above, it is clear that the word 'arrest', when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go where he pleases. When used in the legal sense in the procedure connected with criminal offences, an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing, the commission of a criminal offence. The essential elements to constitute an arrest in the above sense are that there must be an intent to arrest under the authority, accompanied by a seizure or detention of the person in the manner known to law, which is so understood by the person arrested. In this connection, a debatable question that arises for our consideration is whether the mere taking into custody of a person by an authority empowered to

arrest would amount to 'arrest' of that person and whether the terms 'arrest' and 'custody' are synonymous."

14. The first limb of submission of learned counsel for the petitioner that without informing the present petitioner any grounds of arrest or without informing his relatives he was abducted by respondent No.12 on the direction of respondent No.2 without recording any entry in the station diary and subsequently showing him to be arrested on 27.09.2011 at 5.30 p.m. is violation of the provisions of Criminal Procedure Code and specially Sections 47, 48 and 50, whereas the first limb of submission of learned APP was that sub-section (1) of Section 167 uses the expression "person is arrested and detained in custody". The word 'accused' occurring in the second limb of sub-section (2) of Section 167 refers only that person "arrested and detained in custody." Section 167 is one of the provisions falling under Chapter XII of the Code commencing from Section 154 and ending with Section 176 under the caption "Information to the police and other powers to investigate". Though Section 167(1) of Cr.P.C. refers to the investigation by the police and the transmission of the case diary to the nearest Magistrate as prescribed under the Code etc., the main object of sub-section (1)

of Section 167 is the production of an arrestee before a Magistrate within twenty-four hours as fixed by Section 56 when the investigation cannot be completed within that period so that the Magistrate can take further course of action as contemplated under sub-section (2) of Section 167.

15. Sub-section (1) of Section 41 of Cr.P.C. and Section 35 of BNSS deals with cases where the police may arrest the person without a warrant.

16. Section 47 of the BNSS states that, person arrested to be informed of grounds of arrest and right to bail which specifically states that, every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. It further states that, where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

17. Section 48 of the BNSS talks about obligation of person making arrest to inform about the arrest, etc., to relative or a

friend. It speaks that, every police officer or other person making any arrest under the BNSS shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or mentioned by the arrested person for the purpose of giving such information and also to the designated police officer in the district. It further states that, the police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station. An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as the State Government may, by rules, provide. It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.

18. Now reverting back to the facts of the present case, it is alleged by the petitioner that he was arrested on 08.05.2007 in connection with Crime No.149/2007 of Dhantoli Police Station and subsequently six other crimes are registered against him at

Gondia and one Crime at Chandrapur. The Crime chart which is reproduced as under:-

No .	Cr.No. & PS	CHARGES (U/s)	COURT	ST. No.	STATUS
1.	149/07 Dhantoli PS., Nagpur	10, 13, 20 UA (P) A* 3/25 Arms Act, 353 r/w IPC	Adhoc D. & ASJ-5 Nagpur	323 of 2007	Acquitted on 17.12.2009
2.	34/05 Salekasa PS., Gondia	302, 307, 120 (B), 147, 148, 149, 333, 353, 108, 109, 201, 315, 317 IPC -3/25 Arms Act -16,18, 20 UA(P)A* etc.	Adhoc D. & ASJ, Gondia	39 of 2008	Acquitted on 13-08-2010
3.	13/06 Chinchgadh PS., Gondia	302, 120 (B), 147, 148, 149 IPC -3/25 Arms Act 18, 19, 20, 23, 38, 39, 17/40 UA(P)A*	Adhoc D. & ASJ, Gondia	34 of 2008	Acquitted on 05-02-2011
4.	8/06 Chinchgadh PS., Gondia	307, 341, 323, 324, 147, 148, 149 IPC 3/25 Arms Act 20, 23 UA(P) A*	Adhoc D. & ASJ, Gondia	14 of 2008	Acquitted on 13-01-2011
5.	4/06 Chinchgadh PS., Gondia	307 120(8), 147, 148, 149 IPC 3/25 Arms Act 20, 23 UA(P)A*	D.& ASJ. No.1 Gondia	106 of 2007	Acquitted on 11-06-2011
6.	47/06 Chinchgadh PS., Gondia	307, 120(8), 147, 148, 149 IPC 3/25 Arms Act -20, 23 UA(P)A	Adhoc D. & ASJ, Gondia	107 of 2007	Acquitted on 19.07.2010
7.	174/06 Salekasa PS., Gondia	-341, 342, 186, 187, 188, 149, 434, 109, 115, 395, 120(B) IPC -150, 151, 152	Adhoc D. & ASJ, Gondia	40 of 2008	Acquitted on 13.08.2010

		Railway Act -16, 18, 20 UA(P)A* etc.			
8.	3013/08 Ramnagar P.S., Chandrapur	10, 13, 18, 39(1) UA(P)A* 3/25 Arms Act 3, 12 Press Act -420, 464, 468, 124A, 120(B), 34 IPC	Extra Joint Adhoc ASJ, Chandrapur	76 of 2008	Acquitted on 23.09.2011
9.	87/08 Dhantoli P.S., Nagpur	309 IPC	JMFC Court No.2, Nagpur	C.C. No.8934 of 2009	Discharged under Section 258 CPC on 20.07.2009

19. He came to be acquitted after trials in all eight cases. The trial in the last case was completed on 23.09.2011 and Extra Joint Adhoc Additional Sessions Judge, Chandrapur passed order on 23.09.2011 acquitting him with further direction to execute bail bond under Section 437 (A) of Cr.P.C. As per the order of the Sessions Court he was required to furnish the bond and the same were furnished on 26.09.2011. His mother and brother had been to Nagpur and met him and disclosed that they have complied with the order of the Sessions Case. Therefore, the jail authorities ought to have released him early in the morning on 27.09.2011 but intentionally they delayed the procedure and released him about 2.30 p.m. As soon as he came out from the jail, a group of unknown persons caught him, shut his mouth, lifted him and taken

him in unnumbered vehicle. Six persons out of those unknown persons carried him which was an act of forcible abduction. The said act of abduction was also witnessed by his mother, brother and his advocate who was along with his associates present there. His advocate made an attempt to interfere in it but nobody responded to him. On the contrary, advocate was threatened. Regarding the said incident immediately at 3.30 p.m. his advocate made a complaint to PSI Dinesh Zhambare at Dhantoli Police Station. The copy of the said complaint dated 27.09.2011 filed by the advocate of the petitioner namely Advocate Surendra Gadling and others is on record page 78. The petitioner has also placed on record some photographs showing the manner in which he was caught by the persons who were in a civil dress. This fact is substantiated by the reply of respondent No.12. Only his contention is that the petitioner was required in the crime of Purada Police Station Gadchiroli and therefore, his Superior Officer directed him to visit Central Prison, Nagpur to make enquiry about the petitioner and to take him in custody. Accordingly, he visited the Central Prison, Nagpur and enquired about the petitioner and came to know that the petitioner is about released on same day from the jail. Therefore, he conveyed the

said message by telephonically to his superior and his superior, directed him to take petitioner in custody and to bring him at Police Station Desaiganj, Gadchiroli. It is contended that as the petitioner was known to be as a senior hard core member of naxal group, it was dangerous to take him in custody at public place. Accordingly, when he was released from jail, respondent No.12 PSI Shinde had tried to give his identity to him but the petitioner had tried forcibly to fled away from the spot. Therefore, he was taken in custody with the help of sufficient police force. As the petitioner is known as a senior hard core member of naxali group and to bring him safely at Desaiganj Police Station, Gadchiroli, number plate of vehicle was removed for some time and the staff of respondent No.12 were in a civil dress.

20. The similar contention was raised by the respondent No.4 as well as respondent No.2. Learned APP pointed out that the petitioner was never arrested in connection with the crimes registered at Purada Police Station prior to 27.09.2011. The crime was registered at Purada Police Station vide crime No.14/2007 and 23/2007. The charge-sheet came to be filed before Judicial Magistrate First Class, Desaiganj wherein the petitioner was

shown absconding and the charge-sheet was filed against him as per Section 299 of Cr.P.C. In May 2011 three naxlites had surrendered before Superintendent of Police Gadchiroli namely Bandu @ Mohan Kumre, Lalu @ Sukke and Manvati @ Savita and on the basis of their statement the involvement of the present petitioner is revealed. The information received by the respondent No.2 and therefore, he deputed Shri Shinde, PSI, Local Crime Branch, Gadchiroli to approach jail authorities. Accordingly, respondent No.12 approached to the jail authorities and he came to know that the petitioner is about to be released from the Central Prison. As the petitioner was required for interrogation in Crime Nos.14/2007 and 23/2007 and the same were non bailable offences, therefore, when the petitioner was released from the Central Prison Shri Shinde, PSI i.e. respondent No.12 had taken petitioner in custody. As transit period from Nagpur to Desaijanj was about three hours and therefore, after due inquiry the petitioner was shown to be arrested at about 5.30 p.m. on 27.09.2011 and brought to Desaijanj Police Station.

21. Though learned APP has pointed out that respondent No.12 was deputed to inquire about the petitioner with the jail

authorities but he came to know that petitioner is about to be released and therefore, he taken him in the custody as soon as he is released from the jail. Admittedly, these facts narrated by the learned APP are not supported either by any station diary entry or any communication by the respondent No.2 to respondent No.12. There is no station diary entry, general diary entry that respondent No.2 informed to respondent No.12 telephonically to take him in custody.

22. Though respondent No.2 was working in Special Cell i.e. Local Crime Branch, this branch is mostly connected with detection of the crimes. However, they have to maintain the record. Though registers are not contemplated to be maintained in Special Branches, however, the duties to the Police Officers are assigned everyday in writing in these offices. Thus, as a matter of procedure and practice the General Diary and Duty Roster require to be maintained in such offices also.

23. Chapter IV of the Code of Criminal Procedure Code 1973 deals with powers of superior Officers of Police and aid to the Magistrates and the police. Chapter V deals with arrest of

persons, search of places entered by persons sought to be arrested whereas Chapter X deals with the provisions in respect of unlawful assembly, public nuisance and the role of the police in these matters. It is significant also to note that a vital role is assigned by the Code of Criminal Procedure to the Officer incharge of a Police Station. The provisions of the Constitution of India, the Police Acts and the Code of Criminal Procedure, 1973 provide that Police officer has to act within the limits prescribed for his or her actions by the law.

24. The Hon'ble Apex Court in the case of *D.K. Basu vs. State of West Bengal (supra)* held that "we are conscious of the fact that the police in India have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal riots, political turmoil, student unrest, terrorist activities, and among others the increasing number of underworld and armed gangs and criminals. Many hard core criminals like extremist, the terrorists, drug peddlers, smugglers have taken strong roots in the society. It is being said in certain quarters that with more and more liberalisation and enforcement of fundamental rights, it would lead to difficulties in the detection of crimes committed by such categories of hardened criminals by

soft peddling interrogation. It is felt in those quarters that if we lay too much of emphasis on protection of their fundamental rights and human rights, such criminals may go scot-free without exposing any element or iota of criminality with the result, the crime would go unpunished and in the ultimate analysis the society would suffer. The concern is genuine and the problem is real. To deal with such a situation, a balanced approach is needed to meet the ends of justice. This all more so, in view of the expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book those who are involved in the crime. The cure cannot, however, be worst than the disease itself.”

25. The Apex Court further observed that “Challenge of terrorism must be met with innovative ideas and approach. State terrorism is not answer to combat terrorism. State terrorism would only provide legitimacy to 'terrorism'. That would be bad for the State, the community and above all for the Rule of Law. The State must, therefore, ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves, that the terrorist has violated human rights of innocent citizens may render him liable for punishment but it

cannot justify the violation of this human rights expect in the manner permitted by law. Need, therefore, is to develop scientific methods of investigation and trend the investigators properly to interrogate to meet the challenge.”

26. Here in the present case, the petitioner claimed that in violating of Articles 21 and 22 without disclosing the grounds of arrest and without informing his relatives, he was arrested. He further contended that the manner in which he was taken is also without following due process of law. In support of his contention he placed reliance on the complaint filed by his counsel immediately after he was taken into custody addressed to the Dhantoli Police Station. The contents of the said complaint, which is on record page 78 shows that as petitioner was about to release on 27.09.2011, the relatives of the petitioner namely his mother and brother as well as his counsel were present. As soon as the petitioner came out from the jail some persons accosted him and took him in a vehicle without informing the parents of the petitioner. The photographs on record substantiates the said contentions. The arrest panchanama shows the petitioner was shown to be arrested on 27.09.2011 at about 5.30 p.m. The entire arrest memo nowhere discloses that either he or his relatives were

informed as to the reasons of arrest. Clause 8 of the arrest surrender form is blank. We have also perused the relevant station diary entry dated 27.09.2011 which is taken at 5.30 p.m. stating that the petitioner was arrested as he was required in Crime No.14/2007 by P.S.I. Shinde, Local Crime Branch and his Advocate was informed as to his arrest. The entire station diary entry nowhere reveals that grounds of arrest were communicated either to his advocate or to him. The another entry dated 27.09.2011 taken at 9.10 p.m. shows that the petitioner denied to sign on the arrest panchanama and entire direction of the Supreme Court are followed.

27. The petitioner was produced before the Magistrate on 28.09.2011 at about 4.30 p.m. Before the Magistrate also the petitioner has made a complaint the manner in which he was taken into custody. He also stated that the allegation levelled against him that he was absconding is not correct as he was in jail in other crime and released on 27.09.2011 at about 2.00 p.m. However, the Magistrate has not taken cognizance of the said application and remanded to the police custody. The separate application is filed by the petitioner on 27.09.2011 itself. But the

same was also not considered by the learned Judicial Magistrate First Class, Kurkheda.

28. Thus, admittedly, Crime Nos.14/2007 and 23/2007 were registered much prior of taking petitioner in custody. As per contention of respondents, accused was absconding whereas record shows that the petitioner was prosecuted in eight crimes and was in Nagpur Central Prison since the date of his arrest on 08.05.2007 as he was facing prosecution in eight crimes. The contention of respondent Nos.2 and 12 further shows that they learnt that accused is likely to be released. It is further contention of respondent No.2 that involvement of the present petitioner revealed to them in Crime Nos.14/2007 and 23/2007 and therefore, respondent No.12 was sent to enquire about it. Respondent No.12 went for enquiry and it reveals that petitioner was likely to be released on 27.09.2011 and therefore, as soon as petitioner came out from the jail he was taken into custody. It was further submitted by learned APP that being the petitioner was involved in naxalite activities, there was a risk to arrest him at a public place and therefore, they have immediately taken him to the custody as soon as he came out from the jail. Thus, admittedly, the petitioner was taken into custody on 27.09.2011

immediately after he came out from the jail. Admittedly, the respondents were having ample time to furnish the grounds of arrest to the accused when petitioner came out from the jail; his relatives, mother and brother were also present but nothing is on record in the form of entry in the station diary or general diary showing that mother and brother of the petitioner were informed as to his involvement in the crime or the purpose for what he was detained. The advocate of the petitioner and his associates were also present they were also not informed. On the contrary, the documents on record show that advocate of the petitioner immediately approached to the Dhantoli Police Station and lodged complaint as respondent No.12 has not disclosed his identity or identity of his staff to the advocate. The complaint filed by the advocate of the petitioner shows the manner in which the petitioner was taken into custody. Even if it is accepted that the accused was involved in the commission of the crime and that an unnumbered vehicle was used to maintain secrecy, admittedly, the petitioner was neither taken to any Naxalite-related activity nor transported in the said vehicle for the purpose of maintaining secrecy.

29. Section 47 of the BNSS states that, person arrested to be informed of grounds of arrest and of right to bail which specifically states that, every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. It further states that, where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

30. Section 48 of the BNSS talks about obligation of person making arrest to inform about the arrest, etc., to relative or a friend. It speaks that, every police officer or other person making any arrest under the BNSS shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or mentioned by the arrested person for the purpose of giving such information and also to the designated police officer in the district. It further states that, the police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station. An entry of the fact as to who

has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as the State Government may, by rules, provide. It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.

31. In the case of *D.K. Basu vs. State of West Bengal* referred supra wherein the Hon'ble Apex Court observed in para No.16 that "16. The power of arrest, interrogation and detention has now been streamlined in England on the basis of the suggestions made by the Royal Commission and incorporated in Police and Criminal Evidence Act, 1984 and the incidence of custodial violence has been minimised there to a very great extent."

32. In paragraph No.17 it is further held that "Fundamental rights occupy a place of pride in the India Constitution. Article 21 provides "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty, thus, is a sacred and

cherished right under the Constitution. The expression "life of personal liberty" has been held to include the right to live with human dignity and thus, it would also include within itself a guarantee against torture and assault by the State or its functionaries. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Clause (2) of Article 22 directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the Magistrate. Article 20(3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguards provided to a person with a view to protect his personal liberty against and unjustified assault by the State. In tune with the constitutional guarantee a number of statutory provisions also seek to protect personal liberty, dignity and basic human rights of the citizens. Chapter V. of Criminal

Procedure Code, 1973 deals with the powers of arrest of a person and the safeguard which are required to be followed by the police to protect the interest of the arrested person. Section 41, Cr. P.C. confers powers on any police officer to arrest a person under the circumstances specified therein without any order or a warrant of arrest from a Magistrate. Section 46 provides the method and manner of arrest. Under this Section no formality is necessary while arresting a person. Under Section 49, the police is not permitted to use more restraint than is necessary to prevent the escape of the person. Section 50 enjoins every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The police officer is further enjoined to inform the person arrested that he is entitled to be released on bail and he may arrange for sureties in the event of his arrest for a non-bailable offence. Section 56 contains a mandatory provision requiring the police officer making an arrest without warrant to produce the arrested person before a Magistrate without unnecessary delay and Section 57 echoes Clause (2) of Article 22 of the Constitution of India. There are some other provisions also like Sections 53, 54 and 167 which are aimed at affording

procedural safeguards to a person arrested by the police. Whenever a person dies in custody of the police, Section 176 requires the Magistrate to hold an enquiry into the cause of death.

33. By referring various earlier decisions the Apex Court issued the requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:-

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest a such memo shall be attested by atleast one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has

been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaka Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

The Apex Court further clarifies its failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter. The Apex Court further observes that the requirements, referred to above flow from Article 21 and 22 (1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier. These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

34. Though learned APP strongly opposed the contention of the petitioner and submitted that arrest and custody are not synonymous word and also submitted that there is a mandatory compliance in view of the direction of the Supreme Court as the counsel of the petitioner was already informed. Learned APP invited our attention towards station diary entry and submitted that the station diary entry dated 27.09.2011 at serial No.31 taken at 5.30 p.m. at Desai Ganj Police Station states that the information of the arrest was communicated to the advocate of the present petitioner. However, said station diary entry nowhere reveals that grounds of arrest were either communicated to the present petitioner or to the advocate of the present petitioner.

35. As far as grounds of arrest in the petition regarding violation of Article 22 is concerned, we have perused the station diary entry showing that his advocate was communicated. Whether communicating to the advocate in the manner which is mentioned in the general diary entry is sufficient compliance or not has to be ascertained in view of the various decision of the Apex Court. In the case of *Prabir Purkayastha vs State (NCT Of Delhi)* reported in *(2024) 8 SCC 254* the Apex Court was dealing with the challenge to the arrest of the appellant on various grounds

including on the ground of non-furnishing of the grounds of arrest. Along with various provisions of the Indian Penal Code the appellant was arrested under the provisions of Unlawful Activities (Prevention) Act, 1967. After surveying the law, Apex Court declared that any person arrested on the allegation of commission of an offence under the provisions of the UAP Act or for that matter any other offence, he has a fundamental and statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest has to be furnished to the arrested person as a matter of course and without exception at the earliest. It was further observed that right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Articles, 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental rights guaranteed under the aforesaid provisions of the Constitution has not only been frowned upon by this Court in a catena of judgments but would have to be dealt with strictly. The Apex Court further observed that “this Court declared that any infringement of Article 22(1) of the Constitution of India would vitiate the process of arrest and remand. Mere fact that subsequently a charge-sheet came to be filed would not validate the illegality and the unconstitutionality

of the arrest. Such a fundamental right is sacrosanct and cannot be breached under any situation.

36. In subsequent judgment in the case of ***Vihaan Kumar vs. State of Haryana and another*** reported in 2025 SCC OnLine (SC) 269 wherein the Hon'ble Apex Court was considering the challenge to the arrest of the appellant on the ground that he was not informed of the grounds for his arrest, thus being in violation of his fundamental right under Article 22(1) of the Constitution. In the said case, the appellant was arrested under various provisions of the IPC. The Apex Court held that as far as Article 22(1) is concerned, compliance can be made by communicating sufficient knowledge of the basic facts constituting the grounds of arrest to the person arrested. The ground should be effectively and fully communicated to the arrestee in the manner in which he will fully understand the same. Therefore, it follows that the grounds of arrest must be informed in a language which the arrestee understands. Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested. That is why the mode of conveying information of the grounds must be

meaningful so as to serve the objects of Articles 21 and 22. In the above judgment of *Vihaan Kumar Vs State of Haryana (supra)*, wherein the Hon'ble Apex Court laid down the guidelines for the enforcement of Article 22 of the Constitution of India. This decision sets a clear precedent that the investigating agency/police officer/authorities effecting arrest of any person in connection with any cognizable offence without a warrant must provide specific, actionable reasons for an individual's arrest, beyond citing broad provisions of law. The object underlying the provision that the grounds of arrest should be communicated to the person arrested has been very succinctly explained in the said decision. On learning about the grounds for arrest, the person concerned will be in a position to make an application before the appropriate Court for bail, or move the High Court for a writ of habeas corpus. This judgment lays down the following principles, which reads as under:

“a) The requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional condition.

b) Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the

person concerned must understand on what grounds he has been arrested.

c) The mode of conveying the information of the grounds of arrest must be meaningful so as to serve the true object underlying Article 22(1).

d) If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1).

e) On the failure to comply with the requirement of informing the grounds of arrest as soon as may be after the arrest, the arrest would stand vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.

f) If the police want to prove communication of the grounds of arrest only based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document. The grounds of arrest must exist before the same are informed.

g) When an arrestee pleads before a court that the grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police authorities.

h) The grounds of arrest should not only be provided to the arrestee but also to his family members and relatives so that necessary arrangements are made to secure the release of the person arrested at the earliest possible opportunity so as to make the mandate of Article 22(1) meaningful and effective, failing which, such arrest may be rendered illegal.”

37. Similarly, in the case of **Mihir Rajesh Shah Vs. State of Maharashtra & Anr., Criminal Appeal No.2195/2025** decided on **06.11.2025** also deals with the various constitutional rights of the detainee and observes that, the statutory safeguard of legal assistance stands also reinforced by Section 38 of the BNSS 2023, which confers upon an arrested person the right to know the grounds of arrest. Thus, the judgment concludes on the issue which reads as under:

“i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC 1860 (now BNS 2023);

ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.

iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.”

38. Thus, in the decisions of *D.K. Basu vs. State of West Bengal* till *Mihir Rajesh Shah vs. State of Maharashtra and another* it is consistently held that requirements which are laid down by the Hon'ble Apex Court in the case of *D.K. Basu* requires to be observed strictly. Hon'ble Apex Court specifically held that failure to comply with the requirements mentioned shall render the concerned officer liable for departmental action, also render him liable to punish for contempt of court and the proceedings for contempt of the court.

39. Recently the Hon'ble Apex Court in the case of *Jaskaran Jeet Singh Deol vs. State of Punjab* in Criminal Appeal No.4234/2026 held that the requirement of informing the arrested person the grounds of arrest in the light of and under Article 22(1) is not a mere formality but a mandatory binding constitutional safeguards. Thus, if a person is not informed of the grounds of his arrest as soon as may be, it would amount to violation of his fundamental rights thereby curtailing his right to life and personal liberty under Article 21 of the Constitution of India, rendering the arrest illegal. The provisions of Article 22(1) cannot be read in a restrictive

manner; otherwise, its intended purpose of securing personal liberty would not be achieved, rather curtailed and put to disuse.

The Hon'ble Apex Court further observed in paragraph 20.5 that " After analysing a catena of decisions, this Court opined as:-

" This Court is of the opinion that to achieve the intended objective of the constitutional mandate of Article 22(1) of the Constitution of India, the grounds of arrest must be informed to the arrested person in each and every case without exception and the mode of the communication of such grounds must be in writing in the language he understands."

40. The Apex Court clarifies that we are bound by ratio laid down in ***Mihir Rajesh Shah*** with the conclusion summerized in paragraph No.66 of the said judgment.

41. Though learned APP placed reliance on various decisions we do not find the same relevant in the above facts and circumstances as admittedly, there is nothing on record placed by learned APP to show that there is either substantial compliance as far as the requirements laid down by Hon'ble Apex Court in ***D.K. Basu vs. State of West Bengal case***.

42. A plain reading of Article 22(1) of the Constitution of India shows that the intent of the constitution makers while incorporating the provisions was not to create any exceptional circumstances, instead it reads as “No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest.” Thus, it casts mandatory unexceptional duty on the State to provide the arrested person with the grounds of such arrest with the objective to enable that person to be able to defend himself by consulting a legal practitioner of his choice. This mandate of Article 22 (1) is notwithstanding any exception. The Apex Court has made it explicit that the constitutional obligation under Article 22 is not statute-specific and it is grounded in fundamental right of life and personal liberty under Article 21 of the Constitution of India, therefore making it applicable to all offences including those under the IPC 1860.

43. In the light of the object behind Article 22(1), we have looked into whether these compliances were complied with by the respondents. Admittedly, the grounds of arrest were not communicated either to the present petitioner even while taking present petitioner in custody. His mother, brother were not

informed why the petitioner was taken into custody. At least there is no document on record that they were informed. On the contrary, the affidavit filed by the mother of the petitioner shows that in her presence the petitioner was taken without informing anything either to her or the advocate of the petitioner. Thus, petitioner was deprived of getting a legal advise and therefore, there is a clear violation of the requirement laid down by the Hon'ble Apex Court in the case of *D.K. Basu.* (supra)

44. It is thus, clear that exhaustive provisions are provided in Chapter (V) of Criminal Procedure Code which are designed to prevent the abuse of the power of arrest and detention of arrested by the police. The logic behind these provisions is clear and i.e. to provide who has been arrested to seek for release on bail and in the event of offence being non bailable to unable to legal help from his friend and relatives. The legislature was conscious of the fact that arrested person can effectively be kept in custody by denying him to right to have access to legal and for securing bail and hence elaborate measures are also provided to ensure that friend and relatives of arrested person are informed of the arrest.

45. A plain reading of these provisions shows that it ensures the compliance of the safeguards provided under Article 22 of the Constitution of India and to ensure that person arrested and detained is afforded every opportunity to secure his release in the manner known to law. Explanation of above provisions relating to arrest of a person and his detention immediately thereafter has become necessary. The concept of arresting a person is basically to investigate the offence that he has committed by subjecting him to interrogation and to ensure that he does not get chance to tamper with the evidence or to intimidate the witnesses who may have witnessed the crime or fled from the jurisdiction of the Court or however from the jurisdiction of the Court. Ultimately it is to ensure that there is a smooth investigation conducted by the police without there being any impediment.

46. Since the detention of a person infringes on the constitutional rights to be at liberty, the statute has provided an elaborate mechanism to ensure that this detention is monitored at every stage and every attempt is made to ensure that detention of a person is always within well defined parameters.

47. The only question that arises for our consideration in the aforesaid backdrop is whether the petitioner can be said to have been in unlawful custody or illegal detention. The petitioner was prosecuted in Crime No.14/2007 in which he was arrested under Sections 143, 147, 148, 149 and 120(B) 307, 353 of the IPC along with 3/25 of the Arms Act. Though respondent No.12 was working in Special Cell i.e. Local Crime Branch, however, he is required to maintain duty register.

48. Thus, to sum up it is now well accepted proposition that the investigating agencies are required to follow the guidelines issued by the Courts time to time as far as the protection of the fundamental rights of the citizens are concerned. The claim of the petitioner is based on the principle of strict liability. As we have already observed that there is absolutely no compliance by the respondents while taking the petitioner in custody. From the complaint lodged by the advocate of the petitioner, it reveals that despite the advocate and the mother of the petitioner were present, when the petitioner was taken into custody, were not informed. The manner in which the petitioner was taken into custody, admittedly, shows the violation of the fundamental rights of the petitioner. However an attempt was

made to show that considering the gravity of the offence and involvement of the petitioner in the naxal activities the secrecy was maintained. As we have already observed that a plain reading of Article 22(1) of the Constitution of India shows that the intent of the constitution makers while incorporating the provisions was not to create any exceptional circumstances, instead it reads as "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest....", it casts a mandatory unexceptional duty on the State to provide the arrested person with the grounds of such arrest with the objective to enable that person to be able to defend himself by consulting a legal practitioner/choice. This mandate of Article 22(1) is notwithstanding any exception. It is also not statute specific and it is grounded in fundamental right of life and liberty under Article 21 of the Constitution of India which itself is violated by the respondent, and therefore, we are of the considered opinion that the petition of the present petitioner deserves to be allowed.

49. The petitioner has claimed the compensation for violation of his fundamental rights to the tune of Rs.25,00,000/- and direction to respondent No.8/Officer Incharge of Dhantoli

Police Station, Nagpur to investigate in the complaint filed by the advocate of the petitioner Surendra Gadling. As we have already observed that the respondent No.2 and respondent No.12 have violated the guidelines issued by the Hon'ble Apex Court in the case of ***D.K. Basu*** referred supra and subsequent judgments. The grounds raised by the petitioner is that though the offence is cognizable and non bailable the respondent No.12 without communicated with him the grounds of arrest and without informing his relatives arrested and detained him. We have also observed that there is substance in the contention of petitioner and it is a violation of his personal liberty under Article 21 of the Constitution of India. While addressing the prayer of the petitioner for grant of compensation, at this stage, the observation of the Hon'ble Apex Court in the case of ***Rudal Sah vs. State of Bihar and Another***, reported in ***(1983) 4 SCC 141***, is relevant, wherein it is held that:

“Although Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, such as money claims, the Supreme Court in exercise of its jurisdiction under this Article can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The petitioner can be relegated to the ordinary remedy of a suit if his claim to compensation

was factually con-troversial, in the sense that a civil court may or may not have upheld his claim. But where the court has already found, as in the present case, that the petitioner's prolonged detention in prison after his acquittal was wholly unjustified and illegal, there can be no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of the Supreme Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly Violated. Article 21 will be denuded of its significant content if the power of the Supreme Court were limited to passing orders of release from illegal detention. The only effective method open to the judiciary to prevent violation of that right and secure due compliance with the mandate of Article 21, is to mulct its violators in the payment of monetary compensation. The right to compensation is thus some palliative for the unlawful acts of instrumentalities of the State. Therefore, the State must repair the damage done by the officers to the petitioner's rights. It may have recourse against these officers."

50. Admittedly, Article 21 which guarantees the right to life and liberty and due compliance of the same is the mandate of Article 21. The violation of that right requires to be prevented.

51. In the decision of **D.K. Basu** (supra), wherein the Hon'ble Apex Court issued the guidelines as a preventive measure to the Police Officers regarding the arrest of the citizens.

52. The Hon'ble Apex Court has observed in para 44, which reads as under:

“44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages of tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.”

53. While summing up, the Hon’ble Apex Court further observes in para 55, which reads as under:

“55. Thus, to sum up, it is now a well accepted proposition in most of the jurisdiction, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is nor available and the citizen must receive the amount of compensation from the State, which shall

have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the Criminal Courts in which the offender is prosecuted, which the State, in law, is duly bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.”

54. This aspect is also considered by the Division Bench of this Court in the case of ***Veena Sippy Major*** (supra), wherein in para 10 the Division Bench of this Court has referred the decision of the Hon’ble Apex Court in the case of ***D.K. Basu Vs. State of W.B., 1997 CRI.L.J. 743***, wherein in para 35, the Apex Court observed as under:

“35. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall

also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

55. Though learned APP submitted that there is substantial compliance but neither the general diary entry nor the arrest memo shows that either grounds of arrest are

informed to the petitioner or his relatives were informed. Even the arrest panchanama also nowhere discloses in clause 8 that grounds of arrests are communicated to the present petitioner and there is no arrest memorandum or panchanama drawn in terms of the directions contained in clause 2 of paragraph 36 of the decision of the Hon'ble Apex Court in the case of **D.K. Basu** (supra). In terms of Clause 4 of the said directions, no intimation of the petitioner's arrest was given to his relatives. Further, nothing has been placed on record to establish that an entry regarding the petitioner's arrest was made in the arrest register maintained at the police station.

56. Now the question is whether the petitioner is entitled for the compensation or not and if it is held that petitioner is entitled what will be amount of compensation?

57. In the decision of **D.K. Basu** (supra), the Hon'ble Apex Court has reiterated that in case a person illegally detained without complying the mandatory directions laid down then the aspect of compensation requires to be dealt with. In **Veena Sippy Major** (supra), wherein in para 25 the

Division Bench of this Court has referred the decision of the Hon'ble Apex Court in the case of *Neelabati Behera (Smt) Vs. State of Orissa & Ors.*, [(1993) 2 SCC 746], wherein in para 17 and 18 the Apex Court observed as under:

“17. It follows that ‘a claim in public law for compensation’ for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for the enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is ‘distinct from, and in addition to, the remedy in private law for damages for the tort’ resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which 26 justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in *Rudul Sah* and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

18. A useful discussion on this topic which brings out the distinction between the remedy in public law based on strict liability for violation of a fundamental right enabling award of compensation, to which the defence of sovereign immunity is inapplicable, and the private law remedy, is to be found in *Ratanlal & Dhirajlal's Law of Torts*, 22nd Edition, 1992, by Justice G. P. Singh, at pages 44 to 48.”

Similarly, Apex Court in *Veena Sippy Major* (supra) also considered the usual discussion on the topic on strict liability for violation of fundamental right enabling award of compensation refers the relevant portion of Ratanlal & Dhirajlal's Law of Torts, 22nd Edition, 1992 at pages 44 to 48. 33. It is observed by this Court in the light of the judgment of *Neelabati Behera (Smt)* (supra) that, if the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate. It was further observed that the power and jurisdiction of this Court and the High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution of India to a victim whose fundamental rights under Article 21 of the Constitution are violated are thus, well- established."

58. In view of the above observations, admittedly, the act of the Respondent Nos.2 and 12 is contrary to the law laid down by the Apex Court which is established during the hearing of the present petition. Admittedly, petitioner has not stated in this petition regarding what type of pain and agony he has undergone. Admittedly, any amount of money would not be sufficient to compensate the pain and agony of the present petitioner who was kept behind bar without following the due process of law.

However to give him some solace his prayer for granting compensation requires to be considered.

59. The present Respondent No.2 is a Higher Police Officer well versed with the legal provisions holding public office abused his position which is a matter of great public concern. Similarly, respondent No.12 is also Police Officer. When the police persons are violator of the law whose primary responsibility is to protect the law, the punishment for such violation has to be proportionately stringent so as to have effective deterrent effect and instill confidence in the society. The responsibility of the respondent No.2 and 12 to protect and uphold the law. It may not be out of context to remind that the motto of Maharashtra State Police is ***“Sadrakshnaya Khalanighrahanaya”*** (Sanskrit : “To protect good and to punish evil”), which needs to be respected. Those, who are called upon to administer the criminal law, must bear, in mind, that they have a duty not merely to the individual accused before them, but also to the State and to the community at large.

60. Now, the only question is whether the respondent No.2 and 12 to be held liable to pay compensation in personal capacity or State is responsible to pay the said compensation.

61. The Apex Court in the case of *State of Maharashtra & Ors. Vs. Ravikant S.Patil*, reported in *(1991) 2 SCC 373*, wherein the similar issue was involved and the High Court has granted compensation regarding the handcuffing. The Hon'ble Apex Court held that, the handcuffing is an act against all norms of decency and amounts to violation of principles underlying Article 21. It is further observed by the Hon'ble Apex Court that, "we do not propose to interfere with the order directing the payment of compensation. But we think that Shri Prakash Chavan, Inspector of Police, appellant herein, cannot be made personally liable. He has acted only as an official and even assuming that he has exceeded his limits and thus erred in taking the under trial prisoners handcuffed, still we do not think that he can be made personally liable. In *Rudul Sah* referred (supra) this Court directed the State to pay compensation to the person illegally detained. The High Court also having noted this decision observed that the court can order payment of compensation either by the State or

persons acting on behalf of the State. Having so observed, the High Court, however, held Shri Prakash Chavan, Inspector of Police personally liable and directed him to pay the compensation. We are of the view that in the instant case also a similar order as one passed in Rudul Sah (supra), will meet the ends of justice. Then the High Court has also directed that an entry should be made in his service record to the effect that he was guilty of violation of fundamental right of an under trial prisoner. So far this direction is concerned, it is submitted that such an adverse entry cannot straightway be made without giving the Inspector of Police, appellant 2 herein, an opportunity of being heard.

62. In the light of the above observations and here in the present case also the Respondent Nos. 2 and 12 acted as an official and they have exceeded their limits and thus, violating the provisions of law. The petitioner was arrested without following due process of law. In the case of ***Rudul Sah*** (supra), wherein the compensation to the person was granted as they were illegally detained. Thus, in view of the observations of the Hon'ble Apex Court in the case of ***State of Maharashtra & Ors. Vs. Ravikant S. Patil*** (supra), here in the present case also, the State can be

directed to pay the compensation to the present Petitioner for the act of the Respondent Nos.2 and 12 as they were held guilty of violation of the fundamental rights of the present Petitioner.

63. In view of that, we proceed to pass the following order.

O R D E R

- (i) The Writ Petition is partly allowed.
- (ii) The compensation of Rs.2,00,000/- (Rs. Two Lacs Only) shall be paid by the Respondent No.1 to the present Petitioner within a period of eight weeks from today.
- (iii) The amount of compensation be deposited in this Court.
- (iv) If petitioner is dissatisfied with the amount of compensation granted, he is at liberty to file a suit before the appropriate court to get the compensation.
- (v) As far as the other prayer of the petitioner as to the directions to respondent No.8 are concerned, we are not inclined to give any directions to the respondent No.8 regarding enquiry in the complaint filed by the Advocate Surendra Gadling of the petitioner and therefore, said prayer is hereby rejected.

64. With the above directions Criminal Writ Petition is disposed of.

Rule accordingly.

Pending applications, if any, also stand disposed of.

(RAJ D. WAKODE, J.)

(URMILA JOSHI PHALKE, J.)

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