

Reserved on : 10.06.2026
Pronounced on : 15.07.2026



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.7712 OF 2026

BETWEEN:

PALECANDA PONNAPPA @ VISHAL
 S/O LATE SRI P.M.AIYANNA,
 AGED ABOUT 55 YEARS,
 RESIDING AT FAITH CINCHONA ESTATE, KUTTA,
 KODAGU DISTRICT,
 KARNATAKA – 571 250.

... PETITIONER

(BY SRI ANGAD KAMATH, ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
 KUTTA PS KODAGU
 REPRESENTED BY
 THE STATE PUBLIC PROSECUTOR,
 HIGH COURT OF KARNATAKA,
 BENGALURU – 560 001.

2 . XXXXXX
 XXXXXX
 XXXXXX

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP FOR R-1)



THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF BNSS, 2023, PRAYING TO i). QUASH IMPUGNED FIR BEARING CRIME NO.34/2026 DATED 18.04.2026 REGISTERED AT KUTTA POLICE STATION, KODAGU DISTRICT PENDING BEFORE THE FILE OF DISTRICT AND SESSIONS JUDGE KODAGU IN SO FAR AS THE SAME RELATES TO THE PETITIONER (PALECANDA PONNAPPA @ VISHAL ACCUSED NO.2; ii). ISSUE A DIRECTION IN THE NATURE OF DECLARATION DECLARING THAT THE ARREST OF THE PETITIONER ON 19.04.2026 IN CRIME NO.34/2026 OF KUTTA POLICE STATION AND THE CONSEQUENTIAL DEPRIVATION OF THE PETITIONER PERSONAL LIBERTY BY WAY OF DETENTION IN JUDICIAL CUSTODY FROM 19.04.2026 UNTILL HIS RELEASE ON BAIL ON 02.05.2026 WERE BOTH ILLEGAL, UNCONSTITUTIONAL AND IN VIOLATION OF THE PETITIONER FUNDAMENTAL RIGHTS UNDER ARTICLES 14, 21, 22 OF THE CONSTITUTION OF INDIA; iii). ISSUE A DIRECTION TO RESPONDENT NO.1 (STATE OF KARNATAKA) TO PAY THE PETITIONER REASONABLE COMPENSATION IN A SUM OF NOT LESS THAN RS.15,00,000/- OR SUCH OTHER SUM AS THIS HON'BLE COURT MAY DEEM FIT FOR THE VIOLATION OF HIS FUNDAMENTAL RIGHTS UNDER ARTICLES 14, 21 AND 22 OF THE CONSTITUTION OF INDIA, AND AS RESTITUTION FOR THE LOSS OF LIBERTY, DIGNITY, REPUTATION AND BUSINESS LOSSES OCCASIONED TO THE PETITIONER BY REASON OF THE ILLEGAL ARREST, THE UNLAWFUL DETENTION IN JUDICIAL CUSTODY FOR FOURTEEN DAYS FROM 19.04.2026 TO 02.05.2026 AND THE ONGOING PENDENCY OF THE IMPUGNED FIR;iv). ISSUE A DIRECTION TO THE DIRECTOR GENERAL OF POLICE, KARNATAKA SEEKING A ENQUIRY TO BE CONDUCTED BY AN OFFICER NOT BELOW THE RANK OF INSPECTOR GENERAL OF POLICE, INTO THE CONDUCT OF THE INVESTIGATING OFFICER AND ALL OTHER OFFICER CONNECTED WITH THE REGISTRATION OF THE IMPUGNED FIR, THE ARREST OF THE PETITIONER, THE PREPARATION OF THE REMAND APPLICATION DATED 19.04.2026 AND INSERTION OF SEC.3(5) OF BNS INTO THE CASE FILE; (b) TAKE SUCH DISCIPLINARY ACTION AGAINST THE OFFICERS FOUND RESPONSIBLE AS MAY BE WARRANTED ON THE FINDINGS OF THE ENQUIRY; AND (c) PLACE A REPORT ON THE ACTION TAKEN BEFORE THIS HON'BLE COURT WITHIN SUCH TIME AS MAY BE FIXED; v). ISSUE A DIRECTION TO THE ALL CONCERNED

AUTHORITIES TO FORTH WITH EXPUNGE THE PETITIONER'S NAME, PHOTOGRAPH, FINGERPRINTS, BIOMETRIC DATA, AND ALL REFERENCES TO THE PETITIONER FROM (a) THE CRIME AND CRIMINAL TRACKING NETWORK AND SYSTEMS (CCTNs) DATABASE; (b) THE NATIONAL AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM (NAFIS); (c) THE POLICE RECORDS OF KUTTA POLICE STATION, SRIMANGALA POLICE STATION THE OFFICE OF THE SUPERINTENDENT OF POLICE, KODAGU AND THE OFFICE OF THE DIRECTOR GENERAL OF POLICE, KARNATAKA;(d) ANY INTER-STATE OR INTER-AGENCY CRIMINAL RECORDS DATABASE IN WHICH THE PETITIONER'S DETAILS MAY HAVE BEEN ENTERED; AND TO CERTIFY TO THIS HON'BLE COURT THE COMPLETION OF SUCH EXPUNGEMENT WITHIN A STIPULATED PERIOD.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 10.06.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner/accused No.2 is at the doors of this Court seeking the following prayers:

- “(i) Quash impugned First Information Report bearing Crime No.0034 of 2026 dated 18-04-2026 registered at Kutta Police Station, Kodagu District pending before the file of District and Sessions Judge, Kodagu insofar as the same relates to the petitioner (PalecandaPonnappa @ Vishal – accused No.2).
- (ii) Issue a direction in the nature of declaration declaring that the arrest of the petitioner on 19-04-2026 in Crime No.0034 of 2026 of Kutta Police Station and the

consequential deprivation of the petitioner's personnel liberty by way of detention in judicial custody from 19-04-2026 until his release on bail on 02-05-2026 were both illegal, unconstitutional and in violation of the petitioner's fundamental rights under Articles 14, 21 and 22 of the Constitution of India.

- (iii) Issue a direction to Respondent No.1 (State of Karnataka) to pay to the petitioner reasonable compensation in a sum of not less than ₹15,00,000/- (Rupees fifteen lakhs only) or such other sum as this Hon'ble Court may deem fit for the violation of his fundamental rights under Articles 14, 21 and 22 of the Constitution of India, and as restitution of the loss of liberty, dignity, reputation, and business losses occasioned to the Petitioner by reason of the illegal arrest, the unlawful detention in judicial custody for fourteen days from 19-04-2026 to 02-05-2026 and the ongoing pendency of the impugned FIR.
- (iv) Issue a direction to the Director General of Police, Karnataka, seeking an enquiry to be conducted, by an officer not below the rank of Inspector General of Police, into the conduct of the Investigating Officer and all other officers connected with the registration of the impugned FIR, the arrest of the Petitioner, the preparation of the remand application dated 19.04.2026, and insertion of Section 3(5) BNS into the case file; (b) take such disciplinary action against the officers found responsible as may be warranted on the findings of the enquiry; and (c) place a report on the action taken before this Hon'ble Court within such time as may be fixed; and
- (v) Issue a direction to all the concerned authorities to forthwith expunge the Petitioner's name, photograph, fingerprints, biometric data, and all references to the Petitioner from (a) the Crime and Criminal Tracking Network and Systems (CCTNS) database; (b) the National Automated Fingerprint Identification System (NAFIS); (c) the police records of Kutta Police Station, Srimangala Police Station, the Office of the Superintendent of Police, Kodagu and the offices of the Director General of Police, Karnataka; (d) any inter-state or inter-agency criminal records database in which the Petitioner's details may

have been entered; and to certify to this Hon'ble Court the completion of such expungement within a stipulated period.

- (vi) Pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

2. Heard Sri Angad Kamath, learned counsel appearing for the petitioner and Sri B.N. Jagadeesha, learned Additional State Public Prosecutor appearing for respondent No.1. The complainant, a citizen of United States of America ('USA' for short) has stayed back in USA and as such, is not served. Therefore, the petitioner and the 1st respondent/State are heard.

3. *Sans* details, facts necessary are as follows: -

3.1. The petitioner is the principal operator and managing person of Devi Villa Homestay situated at Faith Cinchona Estate, Kutta, Kodagu District. The Homestay is said to be registered with the Department of Tourism, Government of Karnataka under the Karnataka Tourism Trade (Facilitation and Regulation) Act, 2015 (hereinafter referred to as 'the Act' for short). The Homestay is said to be operating within the Faith Cinchona Estate which has coffee

plantation of over sixty years' standing. The villa and the said premises built in a traditional Kodava architectural style is ranked one of the most sought after and highly rated Homestays in all the reviews across multiple international and domestic platforms. It is a family enterprise of the petitioner, his wife and the mother.

3.2. The genesis of the issue is, the complainant, a citizen of USA holding a five-year Indian Tourist Visa valid from 14-08-2024 to 13-08-2029 arrives in India on 19-03-2026 for a tourist visit. She stays in Bengaluru between 22-03-2026 and 24-03-2026, makes her first visit to Devi Villa Homestay run by the petitioner along with her co-worker and a personal friend referred to as Stenita in the complaint. The first visit was booked through Stenita; payment was made through Bank. No grievance arose in the first visit. On 06-04-2026, the complainant on her own initiative, wrote to the petitioner on whatsapp introducing herself as Stenita's sister describing her first stay as the most unimaginable experience that had completely changed her life and for that she had cancelled her flight back to USA and was asking whether she could return. On

07-04-2026 the conversation went on to ask that she was supposed to head back to USA and could not be happier to have cancelled the flight. On 08-04-2026 the petitioner offered two booking windows. The complainant chose 12th to 18th April, 2026. On 09-04-2026 the complainant herself selects Garden View tent. She books her own cab, comes on her own through a Savari app and she was advised to send a photograph of the driver in front of the registered vehicle before departure.

3.3. The complainant arrives at Devi Villa at 1-00 p.m. on 12-04-2026. The petitioner was not personally present at that time. The petitioner's mother receives the complainant, allots a Garden View tent. The allegation in the complaint springs that accused No.1 enters the tent at about 1.30 p.m. serves her welcome juice (guava) and after drinking she becomes drowsy and accused No.1 is alleged to have committed sexual offence in the tent between 1.30 p.m. and 3-00 p.m. The petitioner, on the complainant's own account, was not at the place at the time of alleged offence and did not know of the overt act. On the morning of 13-04-2026 the complainant's father in USA is said to have communicated a mail

expressing concern about her trip and about abrupt discontinuation of antidepressant medication. Long thereafter, a complaint comes to be registered on 18-04-2026.

3.4. The registration of complaint led to arrest of the petitioner; ostensibly he could not be arrested under Section 64(1) of the Bharatiya Nyaya Sanhita, 2023 ('BNS') which is the offence of rape nor under Sections 238 or 239 which deal with causing disappearance of evidence or omission to give information of offence by a person bound to inform. But, with the permission of the Magistrate, offence under Section 3(5) of the BNS is added. Neither offence under Sections 201 and 202 of IPC which are Sections 238 and 239 of BNS nor Section 3(5) of BNS are cognizable offences. But, the petitioner is taken into custody and later enlarged on bail. The petitioner has now preferred the subject petition seeking quashment of crime and declaration that arrest of the petitioner is contrary to law and has sought compensation of ₹15,00,000/- for the illegal arrest.

SUBMISSIONS:**PETITIONER:**

4. The learned counsel Sri Angad Kamath appearing for the petitioner would contend that the power to arrest is available to the State only in respect of offences classified as cognizable appended to the BNSS. The classification of a cognizable offence in the Schedule has two-fold implications viz., it enables the Police to register a FIR and investigate such offence without the permission of the Magistrate and enables it to make an arrest if justified and necessary. He would submit that there was no offence against the petitioner that could lead to his arrest. An offence under Section 3(5) of the BNS is added for the first time in the remand application and the petitioner is taken into custody. The remand order indicates basis of the allegation, as the Police have added Sections 238 and 239 and 3(5) of the BNS against the petitioner. The attribution in the complaint is regarding two accused persons and the power to arrest was available against accused No.1 who is alleged to have committed a cognizable offence and not against the petitioner. He would contend that not only the proceedings against the petitioner be quashed, but the arrest should be held to be illegal. He would

emphasize merely because a citizen of USA is the subject of crime and the consulate has requested action to be taken, the fundamental rights of the petitioner cannot be given a go-bye.

STATE PUBLIC PROSECUTOR:

5. Per contra, the learned Additional State Public Prosecutor would place the original file for perusal of the Court and would contend that accused Nos.1 and 2 are alleged of common intention under Section 3(5) of the BNS. Therefore, the arrest of the petitioner was necessary to unearth what happened in the homestay at the relevant point in time. He would contend that the petitioner is now out on bail and, therefore, the question with regard to his illegal arrest need not be gone into. He would submit that it is a matter of investigation for the petitioner to participate and if nothing is found against the petitioner it would undoubtedly lead to filing of a 'B' report against the petitioner, since the offence involves alleged rape of the citizen of USA. The petitioner must not be shown any indulgence at this juncture. He would seek dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, the following issues would arise for consideration:

- (i) Whether the crime so registered against the petitioner warrants interference?
- (ii) Whether the arrest of the petitioner was illegal?
- (iii) Whether the petitioner is entitled for compensation in the event his arrest would be held illegal?

CONSIDERATION:

ISSUE NO.1:

“Whether the crime so registered against the petitioner warrants interference?”

7. The afore-narrated facts that led to registration of crime are all narrated in detail hereinabove. They would not require any iteration. The reason for dragging the petitioner into the web of proceedings is a complaint SO registered against him and other accused for the offences punishable under Sections 64, 238 and

239 of the BNS. In the light of the fulcrum of the entire issue getting triggered from registration of the complaint, I deem it appropriate to notice gist of the complaint. The gist of the complaint as found in column No.10 of the FIR reads as follows:

"On 18.04.2026 from 12:00 pm to 1:30 pm statement of victim "A"(name changed) recorded at Dr.Mahesh Rao house of CLV of US consulate, #861, 14th main road vijayanagar, mysore - 570017 I am a citizen of the USA, Passport holding no. # A30928952 (United State of America). I am working as a Administrative Assistant for Meijer, based out of grand rapids Michigan, USA from the past two years.

I came to Bangalore, India on 19/03/2026 on a tourist visa valid from August 14, 2024 to 13 August 2029 in order to explore tourist places of India, for vacation and to see Indian friends and families. During the vacation I stayed in Bangalore Casa Cottage from 19/03/2026 to 22/03/2026 and also Devi Villa Coorg from 22/03/2026 to 24/03/2026 which I booked through AIRBNB application. I came to know about the home stay through stenitawho is my friend. she knows about the home stay and the owners. stenita is my co-worker from past 2 years, we stayed for about 2 days at the Devi Villa Home stay from 22/03/2026 to 24/03/2026. At the time when we were checking in the home stay, Vishal welcomed us and took details of us. I stayed in Devi Villa home stay for 3 days and then I went back to Stenita house and stayed till 12/04/2026 and then went back to Bangalore stayed at Casa Cottage, Bangalore.

On same day I left Bangalore towards Devi Villa home stay through taxi savari vehicle no. KA53D2506 and taxi arrived Devi villa home stay at 01:00 PM on same day, during this time nobody received us at home stay. But Grandmother (Vishal's Mother) was present and allotted a lent house to me. Grandmother (Vishal's mother) name was anitha and her age is about 80 to 90 year old. Afterwards I entered the tent all my luggage was already kept by house keeper's inside the tent. Because of tiredness I took off my cloths wrapped in the sheet

and I was lying on the bed, stomach down. About 1:30pm house keeper entered into my tent and taps me on my left shoulder and offered me a welcome juice(guava). after I drank the juice, house keeper left the tent, then I was kind of sleepy and drowsy. When I woke up the same man was above me and Raped me, at the time I was not able to move, he ejaculated over my back and he cleaned himself and also my back during that time. I was conscious but could not resist or move my body. due to drowsiness but I could see and feel everything. This incident happened between 1:00 pm to 3:00 pm. I know that person from previous stay he was wearing green shirt which is uniform of the home stay and around 40 to 45 years old, Stout build, baldness in front and may be 5.5 to 5.7 height and I don't know his full name but his name starts with letter V, but I think he is called as Vrijesh. After the incident I finally I could get up and went to swimming Pool area. during that time grandmother (Vishal's Mother) was around the pool and Couldn't connect to the Wifi. around 4:00PM to 5:00PM, When I was in the pool the same man gave me the Candy bar and I told him to get away from me. I did not eat but broke it down Kept it aside. During that time owner of the home stay Vishal came and gave me the Wifi password but I did not disclose anything to the owner at that time. Once I was out of the pool hung around property and sat by the pool texted Collins my good friend who is my colleague in the USA, I didn't call him because of time difference.

At around 9:50pm I called my friend Collins in USA(+1-610-848-0930) Spoke for 16 minutes and again spoke for 8 minutes and walked back to the tent. My friend Collins suggested to inform the family about the incident. Around that time same man walked into my tent gave me my own vitamin C. Then I Scream at around 10:09 pm to 10:19 pm Ran into the main house where I was asked the owner Vishal, I wanted a safe place with a lock and not a tent. Vishal finally allowed me stay in the main house.

On next day Sunday Collins advised me from the USA to consult doctor and He sent details of how to get help. Collins is my friend who is in the USA, He contacted the US Consulate as well as Stenita Lewis but Stenita didn't help at all. Stenita sent me a text message about the rape and I was not able to connect properly with US Consulate. Home stay owner were not allowing

me to even make calls and I was connected through text mode only. I was very afraid and helpless.

On 14/04/2026 the US Consulate connected with me and Mister Carlton who is the ACS in Chennai who was helping out and he was constant touch with me. Since Home stay members were forced me to stay till Thursday that is from Sunday to Thursday, They were told me not to inform to the Police, not to consult the Doctor and not allowing me talk to anybody except texting. Then on Thursday I left the place with the taxi driver name Sujith in the vehicle number KA12C4978 and Vishal arranged the above taxi. I left that place around 9 am and came to the Mysore by noon. Before leaving the home stay I have collected some of the evidence such as sheet which was on bed, head band and tissue papers from the tent and brought it along with me to the Mysore.

I got help from ACS, Carlton who got me in touch with Dr Mahesh Rao(+91-98454-22755) who is the CLV for USA citizens he and His wife have been very helpful. As of now I am eager to fly back to the USA and as I need to work and I need immediate medical check-up locally in private hospital like kamakshi or others to ensure my health is safe. Presently I am staying in hotel Le Ruchi in Mysore, I am giving this statement at the house of CLV of USA consulate, Dr Mahesh Rao suggested by USA consulate #861, 14th main road Vijayanagar, Mysore 570017. I have given this statement in front of the Mufti police officer with my interest at around 12:00 PM to 1:30 PM on 18/04/2026 at the above-mentioned address."

The allegation is that the complainant comes to Devi Villa through taxi Savari which she only booked. At that time, nobody received her at the homestay, but the mother of the petitioner aged about 90 years old was present. Later came the petitioner to enquire about the petitioner. By drinking a particular juice brought by the housekeeper, it appears, she felt drowsy and the housekeeper left

the tent. When she woke up, the same man who served the juice came back and raped her. He is said to have ejaculated over her back; he cleaned himself and went away. She was conscious and could not resist the rape or move the body due to drowsiness. The incident is said to have happened between 1-00 p.m. and 3-00 p.m. Other explanation found in the complaint is that once she become alright, she gets out of the pool, hangs around the property and walks back to the tent and later informs her friend in USA. The owners of the property were not immediately at home.

8. The owners of the property after they were informed have taken all steps that is legally necessary to be done. Certain whatsapp chats giving all encomiums to the Villa is appended to the petition including the picture of the travel and the car in which she comes to the Villa. On 19-04-2026 a communication is made between the petitioner and the father of the complainant. It becomes germane to notice the same. It reads as follows:

"To "Aparna Ponnappa"<aparna@reddnetwork.com>

Stenita Lewis

----- Forwarded message -----

From: Karen Brown <kahb69@gmail.com>

Date: Tue, 14 Apr, 2026, 01:16

Subject: Re: Mom & Dad Checkin.

To: xxxxxxxx<xxxxxxxxx.goat@gmail.com>

Cc: Colin Osborne <colin.osborne@gmail.com>, Stenita Lewis <stenita.lewis@gmail.com>, <bvarner@breezeline.net>, Michele Varner <michelevarner5@gmail.com>, xxxxxx<xxxxxx@meijer.com>

You handled this very well. God is so good!
Love you lots.

On Mon, Apr 13, 2026, 9:54 AM xxxxxx<xxxxx@gmail.com> wrote: He sent me this email 16 minutes ago, after a series of numerous texts and one phone call yesterday afternoon into the evening causing me so much anxiety, stress and despair. Was truly concerned that there was a war going on in the US, or that Johnstown had been bombed. I truly cannot understand why he is continuing to send me these things. I have no desire to continue any correspondence with him. Note how he is so close minded, if he is so concerned, why not come to India for yourself to see what it's all about? I'm not paying for a flight to Johnstown because that place makes me miserable. Why would I continue to put myself through hurt like that when there truly is another way to live?

Dad/Mom, I would really love it if you could please provide me with an honest update on Hailey's health. I feel you are using scare tactics as a way to get me to do what you want (come back to the US). I am more content than ever before.

Also, for those you mention that are reaching out and you're fielding calls, etc. - I'm calling bullshit on that. You still have yet to provide me with a single name of someone that has reached out with concern. Actually, you have REFUSED multiple times to tell me who these individuals are. If they're so concerned, please have them reach out to me directly, as you truly do not know the very first thing about your own daughter. Yes. This

hurts me so much to say this, but this is God's honest truth and you KNOW it in your heart and soul you really don't accept me, never have, and never will.

Additionally, for context to all on this email - I began this as just a forward to Colin, Stenita and Karen. Some of my closest and truest people who I wholeheartedly love, and who know and understand me in ways you do not. I started the email with my.....

I'm working my job right now, my work understands me and they are extremely happy for me and have blessed me to much by letting me stay here longer, AND that I'm ALLOWED to work. I don't even HAVE to work, but they are letting me and it's wonderful I'm able to make my American living here at least for a few weeks longer.

Why is it you want me to come back to the US so urgently when I am learning and experiencing first hand that miracles really do happen, God really does exist, and I am finally for the first time in my life, feel healthier than I ever have? No constant body pain, I have no want/thought/desire for abusive/addictive substances. My bowel movements are aligned. I am so much physically closer to God/Heaven.

The unenlightened xxxxx would have continued to put up with this trend of trauma and abuse. I am finally taking a stand and being who I truly am for the first time in my life.

Why are you pushing so hard for me to go back onto antidepressants?

Why are you being so close minded to what I'm experiencing with no want to even understand what I'm talking about.

I honestly thought the drive back from Johnstown to Michigan would have been nice and given us time to talk and understand each other more. I clearly was wrong and I am so sad for that xxxxx who tried and tried and tried even after these years of mental torment and torture you cast upon me. No father should ever make her daughter feel such way. I am learning about life, living, honesty, truth, respect, everything it takes to be a Good human being.

I was intensely hurt that you have been so closed off to this entire wonderful thing that's happening to me. I have been SAD for you and have been praying for you that you are able to find peace and take some comfort. Please stop worrying about me... there is truly no need.

It's 9:44 am ET; 7:14 pm IST, about to get some more solid work done for my meijer job, because they are good to me, treat me with respect and encourage me to be my authentic self by letting me stay on vacation longer and get paid while doing so.

Enough for now

Namaste

xxxxxxx

-----Forwarded message -----

From: <bvarner@breezeline.net>

Date: Mon, Apr 13, 2026 at 9:12AM

Subject: Mom & Dad Checkin.

To: xxxxx<xxxxxx@gmail.com>

Cc: <xxxxxx@gmail.com>, <michelevarner5@gmail.com>

xxxxxxx,

The urgency to connect with you is because we are very concerned about you and want you to come home soon safely. Your trip has taken a toll on us.... your Mom is running back and forth to Haileys weekly, caring for... this constant worry about you is wearing on her and me. And then she has to field calls from friends that are seeing your posts and are also very concerned. You are 1/2 way around the world without anyone else we know and in the middle of nowhere.... Why wouldn't we as loving Parents naturally be very worried about you - we don't understand why you cannot grasp that. Also, the issue with antidepressant Meds amplifies this

whole concern - I know more than you might believe about this subject and have known many people that stop them like you did and end up in a world of "hurt" with extreme mood swings. Please consider going back to a smaller dose maybe .05 or 10mg of Lex if your experiencing negative thoughts. As far as me dismissing you that couldn't be further from the truth. I/We always want you to come home as often as you can especially Mother's Day. The only thing I had to think about was your (off the cuff remark) about me driving you back to Michigan. If you are tight on funds I'll be happy to pay for your plane ticket to Johnstown. xxxx, please remain safe and healthy and come home soon - there are a lot of people that deeply Love You and are concerned about you. You can tell us all day long that things are fine, but we want you back safely and worry about you 24/7.

Thanks

Please confirm receipt of this message!

Bob Varner (Broker of Record)

V.P. Real Estate & Brokerage

814.418.4495 (Cell Text)

bvarner@atlanticbb.net

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116 Union Ave.

Altoona Pa. 16602

814.942.6300 (O)

814.942.3903 (F)"

9. Crime comes to be registered on 18-04-2026, the gravamen of the complaint has already been extracted hereinabove. The communications between them is also extracted hereinabove. In the light of the said allegations, the crime must be permitted to be investigated into. There is no warrant of interference with the investigation. The issue is answered accordingly.

ISSUE NO.2:

“Whether the arrest of the petitioner was illegal?”

10. To consider this issue of whether the arrest of the petitioner was warranted at all in the case at hand, it becomes imperative to notice the offences that are alleged against the petitioner. The foremost among them is, Section 64(1) of the BNS, which deals with the offence of rape - a grave and cognizable offence. Yet, the invocation of the said provision against the petitioner appears, prima facie, wholly incongruous, for the petitioner was admittedly nowhere present at the scene of the

alleged occurrence and is not attributed with any overt act constituting the offence.

10.1. The remaining offences alleged are under Sections 238, 239 and 351 of the BNS, all of which are non-cognizable in nature. Notwithstanding the unmistakable character of these offences as non-cognizable, the petitioner was picked up by the police on the evening of 18-04-2026, detained through the night, and formally arrested at 5:00 a.m. on 19-04-2026. Thereafter, he was produced before the learned Magistrate only at 11:30 p.m. on the following day for the purpose of remand.

11. What compounds the infirmity is, the remand application itself, wherein the Police sought to invoke Section 3(5) of the BNS, a provision embodying the principle of common intention, as the fulcrum for seeking remand. The ostensible justification for the arrest was that the petitioner was required for custodial interrogation. **It is precisely here that the illegality attending the arrest begins to manifest with stark clarity.**

12. The offences initially alleged against the petitioner were those punishable under Sections 238, 239 and 351 of the BNS. At the stage of remand, Section 3(5) was additionally pressed into service. Sections 238, 239, 351 and 3(5) of the BNS read as follows:

"238. Causing disappearance of evidence of offence, or giving false information to screen offender.—

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the Commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false shall,—

- (a) if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;
- (b) if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;
- (c) if the offence is punishable with imprisonment for any term not extending to ten years, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is

liable to imprisonment of either description for seven years, and also to fine.

239. Intentional omission to give information of offence by person bound to inform.—Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

... ..

351. Criminal intimidation.—(1) Whoever threatens another by any means, with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration

A, for the purpose of inducing B to resist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

(2) Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(3) Whoever commits the offence of criminal intimidation by threatening to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with

imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

(4) Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence under sub-section (1).

3. General explanations.

...

(5) When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

None of these provisions render the alleged acts cognizable. They remain non-cognizable offences. Section 3(5) of BNS, akin to Section 34 of the erstwhile Indian Penal Code, 1860, does not create a substantive offence by itself; it is merely a rule of attribution of liability. It extends culpability to those who may not have physically committed the act, but who are shown to have shared the dual elements of *mens rea* and *actus reus* with the principal offender. Such a provision, standing alone, could never furnish legal foundation for the arrest of the petitioner, unless the foundational offences themselves were cognizable and carried

punishment beyond the threshold warranting such coercive action.

Arrest is not a ritualistic exercise to be undertaken at the whim of the investigating agency; it is a grave intrusion into personal liberty, sanctioned only upon strict compliance with statutory safeguards and constitutional limitations.

13. In this backdrop, it becomes apposite to traverse the judicial landscape governing the circumstances in which the liberty of a citizen may be curtailed by arrest. **The law has consistently underscored that arrest is not to be treated as the first instinct of investigation, but as a measure of last resort, to be employed only when compelling necessity demonstrably exists.**

JUDICIAL LANDSCAPE:

ON ARREST:

13.1. The Apex Court in the case of **D.K. BASU v. STATE OF WEST BENGAL**¹ has held as follows:

"....

¹ (1997) 1 SCC 416

17. Fundamental Rights occupy a place of pride in the Indian 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 or 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 any 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 the Criminal Procedure Code, 1973 deals with the powers of arrest of a person and the safeguards which are required to be followed by the police to protect the interest of the arrested person. Section 41 CrPC 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.

18. However, in spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third-degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. A reading of the morning newspapers almost everyday carrying reports of de-humanising torture, assault, rape and death in custody of police or other governmental agencies is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the rule of law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder.

19. The Third Report of the National Police Commission in India expressed its deep concern with custodial violence and lock-up deaths. It appreciated the demoralising effect which custodial torture was creating on the society as a whole. It made some very useful suggestions. It 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 recommendations of the Police Commission (supra) reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. These recommendations, however, have not acquired any statutory status so far.

20. This Court in Joginder Kumar v. State of U.P. [(1994) 4 SCC 260: 1994 SCC (Cri) 1172] (to which one of us, namely, Anand, J. was a party) considered the dynamics of misuse of police power of arrest and opined: (SCC p. 267, para 20)

"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. ... 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."

21. Joginder Kumar case [(1994) 4 SCC 260: 1994 SCC (Cri) 1172] involved arrest of a practising lawyer who had been called to the police station in connection

with a case under inquiry on 7-1-1994. On not receiving any satisfactory account of his whereabouts, the family members of the detained lawyer preferred a petition in the nature of habeas corpus before this Court on 11-1-1994 and in compliance with the notice, the lawyer was produced on 14-1-1994 before this Court. The police version was that during 7-1-1994 and 14-1-1994 the lawyer was not in detention at all but was only assisting the police to detect some cases. The detenu asserted otherwise. This Court was not satisfied with the police version. It is noticed that though as on that day the relief in habeas corpus petition could not be granted but the questions whether there had been any need to detain the lawyer for 5 days and if at all he was not in detention then why was this Court not informed, were important questions which required an answer. Besides, if there was detention for 5 days, for what reason was he detained. The Court, therefore, directed the District Judge, Ghaziabad to make a detailed enquiry and submit his report within 4 weeks. The Court voiced its concern regarding complaints of violations of human rights during and after arrest. It said: (SCC pp. 263-64, paras 8 and 9)

“The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violations of human rights because of indiscriminate arrests. How are we to strike a balance between the two?”

A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first — the criminal or society, the law violator or the law abider”

This Court then set down certain procedural “requirements” in cases of arrest.”

13.2. The Apex Court in the case of **ARNESH KUMAR v. STATE OF BIHAR**², holds as follows:

" "

7. As the offence with which we are concerned in the present appeal, provides for a maximum punishment of imprisonment which may extend to seven years and fine, Section 41(1)(b) CrPC which is relevant for the purpose reads as follows:

"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) ***

(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)***

(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

² (2014) 8 SCC 273

- (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."

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."

... ..

9. Another provision i.e. Section 41-A CrPC aimed to avoid unnecessary arrest or threat of arrest looming large on the accused requires to be vitalised. Section 41-A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), which is relevant in the context reads as follows:

"41-A. 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."

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 Court."

13.3. In the case of **MOHAMMED ZUBAIR V. STATE (NCT OF DELHI) AND OTHERS³**, the Apex Court holds as follows:

"....

29. Police officers are vested with the power to arrest individuals at various stages of the criminal justice process, including during the course of investigation. However, this power is not unbridled. In terms of Section 41(1)(b)(ii)CrPC, the police officer in question must be satisfied that such arrest is necessary to prevent the person sought to be arrested from committing any further offence, for proper investigation of the offence, to prevent the arrestee from tampering with or destroying evidence, to prevent them from influencing or intimidating potential witnesses, or when it is not possible to ensure their presence in court without arresting them.

30. Police officers have a duty to apply their mind to the case before them and ensure that the condition(s) in Section 41 are met before they conduct an arrest. This Court has time and again, reiterated the importance of doing so, including in *Arnesh Kumar v. State of Bihar* [*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] , where the Court observed : (SCC p. 277, para 6)

"6. ... The existence of the power to arrest is one thing, the justification for the exercise of it is

³ 2022 SCC OnLine SC 897

quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person.”

31. We once again have occasion to reiterate that the guidelines laid down in *Arnesh Kumar* [*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] must be followed, without exception. The *raison d'être* of the powers of arrest in relation to cognizable offences is laid down in Section 41. Arrest is not meant to be and must not be used as a punitive tool because it results in one of the gravest possible consequences emanating from criminal law : the loss of personal liberty. Individuals must not be punished solely on the basis of allegations, and without a fair trial. When the power to arrest is exercised without application of mind and without due regard to the law, it amounts to an abuse of power. The criminal law and its processes ought not to be instrumentalised as a tool of harassment. Section 41CrPC as well as the safeguards in criminal law exist in recognition of the reality that any criminal proceeding almost inevitably involves the might of the State, with unlimited resources at its disposal, against a lone individual.”

13.4. Later, the Apex Court in the case of **SATENDER KUMAR ANTIL V. CBI**⁴ has held as follows:

“....

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* [*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273: (2014) 3 SCC (Cri) 449] : (SCC pp. 278-81, paras 7-12)

⁴ (2022) 10 SCC 51

"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 41CrPC.

8. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57CrPC 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 167CrPC. 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 167CrPC, 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 41CrPC 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 41CrPC 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 41CrPC 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 41CrPC 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 AIPC is registered but to satisfy themselves about the necessity for arrest under the

parameters laid down above flowing from Section 41CrPC;

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-ACrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-AIPC 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.

... ..

29. Despite the dictum of this Court in Arnesh Kumar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273: (2014) 3 SCC (Cri) 449], 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.

... ..

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 [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273: (2014) 3 SCC (Cri) 449], 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."

The Apex Court in **D.K. BASU** *supra* holds that fundamental rights occupy a position of unparalleled pride within the constitutional framework of India. Article 21 of the Constitution of India ordains, in emphatic terms, that no person shall be deprived of his life or

personal liberty except in accordance with procedure established by law. Personal liberty, therefore, is not a mere statutory privilege; it is a inviolable constitutional guarantee. The Apex Court further observed that arrest during investigation, even in respect of a cognizable offence, cannot be treated as a matter of routine or convenience, but would stand justified only upon the existence of legally sustainable circumstances warranting such deprivation of liberty.

The principle was carried forward and fortified in **ARNESH KUMAR** *supra*, wherein the Apex Court authoritatively held that in offences punishable with imprisonment of less than seven years, the mere existence of power to arrest does not *ipso facto* justify its exercise. The Court mandated that, save in exceptional circumstances, a notice under Section 41-A of the Code of Criminal Procedure, 1973 must precede arrest, summoning the accused for appearance and interrogation. **The judgment laid down unmistakable safeguards, declaring that arrest can never be automatic; it must be preceded by a conscious application of**

mind by the investigating agency regarding the necessity of such arrest.

The same constitutional ethos echoed in **MOHAMMED ZUBAIR** *supra*, where the Apex Court underscored that **arrest is neither intended to be, nor permitted to become, a punitive instrument.** The Court observed that arrest carries with it the gravest consequence known to criminal jurisprudence - the deprivation of personal liberty and therefore cannot be deployed as a tool of punishment before adjudication.

The said principles were reiterated with renewed emphasis in **SATENDER KUMAR ANTIL** *supra*. The Apex Court unequivocally held that constitutional Courts are expected to come down with severity upon investigating officers who effect arrests in brazen disregard of Sections 41 and 41-A of the Code of Criminal Procedure, 1973 and in violation of the binding mandate laid down in **ARNESH KUMAR. The distilled essence of these pronouncements is singular and unmistakable: personal liberty cannot be sacrificed at the altar of mechanical**

policing, and arrest cannot become a reflexive act of investigation.

14. It is trite, that no arrest can be made merely because it is lawful for the police to do so. The existence of power to arrest is one thing; the justification for its exercise is entirely another. Law does not countenance arrest as an instinctive response. Before curtailing the liberty of a citizen, the investigating agency must arrive at a reasonable satisfaction, founded upon objective material and preceded by due investigation, as to the genuineness and bona fides of the complaint or information received. **Every arrest carries consequences far beyond physical restraint - it strips a person of liberty, subjects him to humiliation, curtails his freedom, and often leaves behind an indelible scar upon reputation and dignity.**

15. Diving back to the facts of the case at hand and testing them on the anvil of the principles enunciated by the Apex Court in the aforesaid decisions, what unmistakably emerges is, a deeply disquieting picture of executive excess. The personal liberty of the

petitioner, a right guarded under Article 21 of the Constitution, has been snatched away by the jurisdictional Police without any discernible justification, without adherence to statutory safeguards, and without even the semblance of procedural fairness. The arrest, therefore, cannot be seen as a mere irregularity in procedure; it strikes at the very heart of constitutional governance. Such deprivation of liberty, bereft of lawful justification, becomes a blatant infraction of the law declared by the Apex Court and a direct assault on the constitutional tenets of dignity, fairness, and due process. Therefore, I hold the arrest of the petitioner as illegal. The issue is answered accordingly.

ISSUE NO.3:

“Whether the petitioner is entitled for compensation in the event his arrest would be held illegal?”

16. The prayer of the petitioner as quoted hereinabove is for grant of compensation on such illegal arrest. I have found the arrest of the petitioner to be illegal in answer to Issue No.2. In view

of the said analysis *qua* issue No.2, it becomes germane to consider whether the petitioner is entitled to compensation. Once this Court arrives at an unequivocal finding that the arrest of the petitioner was illegal and effectuated in brazen disregard of the mandate laid down in **ARNESH KUMAR V. STATE OF BIHAR**, as repeatedly affirmed and reinforced in subsequent pronouncements, the consequence in law must necessarily follow. Constitutional Courts do not merely declare illegality; they are duty-bound to render meaningful remedies against State excesses. In that light, I deem it appropriate to notice the jurisprudence with regard to grant of compensation on illegal arrest.

JUDICIAL PRISM:

COMPENSATION ON ILLEGAL ARREST:

16.1. The Apex Court, in the case of **SUBE SINGH V. STATE OF HARYANA**⁵ has held as follows:

"....

Compensation as a public law remedy

⁵ (2006) 3 SCC 178

31. Though illegal detention and custodial torture were recognised as violations of the fundamental rights of life and liberty guaranteed under Article 21, to begin with, only the following reliefs were being granted in the writ petitions under Article 32 or 226:

(a) direction to set at liberty the person detained, if the complaint was one of illegal detention.

(b) direction to the Government concerned to hold an inquiry and take action against the officers responsible for the violation.

(c) if the enquiry or action taken by the department concerned was found to be not satisfactory, to direct an inquiry by an independent agency, usually the Central Bureau of Investigation.

Award of compensation as a public law remedy for violation of the fundamental rights enshrined in Article 21 of the Constitution, in addition to the private law remedy under the law of torts, was evolved in the last two-and-a-half decades.

32. In the Bhagalpur Blinding case [Khatri (II) v. State of Bihar [(1981) 1 SCC 627 : 1981 SCC (Cri) 228]] Bhagwati, J. (as he then was), speaking for the Bench, posed the following question while considering the relief that could be given by a court for violation of constitutional rights guaranteed in Article 21 of the Constitution: (SCC p. 630, para 4)

"[B]ut if life or personal liberty is violated otherwise than in accordance with such procedure, is the court helpless to grant relief to the person who has suffered such deprivation? Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty."

The question was expanded in a subsequent order in Bhagalpur Blinding case [Khatri (IV) v. State of Bihar [(1981) 2 SCC 493 : 1981 SCC (Cri) 503]] thus: (SCC p. 504, para 7)

"If an officer of the State acting in his official capacity threatens to deprive a person of his life or personal liberty without the authority of law, can such person not approach the court for injuncting the State from acting through such officer in violation of his fundamental right under Article 21? Can the State urge in defence in such a case that it is not infringing the fundamental right of the petitioner under Article 21, because the officer who is threatening to do so is acting outside the law and therefore beyond the scope of his authority and hence the State is not responsible for his action? Would this not make a mockery of Article 21 and reduce it to nullity, a mere rope of sand, for, on this view, if the officer is acting according to law there would ex concessione be no breach of Article 21 and if he is acting without the authority of law, the State would be able to contend that it is not responsible for his action and therefore there is no violation of Article 21. So also if there is any threatened invasion by the State of the fundamental right guaranteed under Article 21, the petitioner who is aggrieved can move the court under Article 32 for a writ injuncting such threatened invasion and if there is any continuing action of the State which is violative of the fundamental right under Article 21, the petitioner can approach the court under Article 32 and ask for a writ striking down the continuance of such action, but where the action taken by the State has already resulted in breach of the fundamental right under Article 21 by deprivation of some limb of the petitioner, would the petitioner have no remedy under Article 32 for breach of the fundamental right guaranteed to him? Would the court permit itself to become helpless spectator of the violation of the fundamental right of the petitioner by the State and tell the petitioner that though the Constitution has guaranteed the fundamental right to him and has also given him the fundamental right of moving the court for enforcement of his fundamental right, the court cannot give him any relief."

33. Answering the said questions, it was held that when a court trying the writ petition proceeds to inquire into the violation of any right to life or personal liberty, while in police custody, it does so, not for the purpose of adjudicating upon the guilt of any particular officer with a view to punishing him but for the purpose of deciding whether the fundamental right of the

petitioners under Article 21 has been violated and the State is liable to pay compensation to them for such violation. This Court clarified that the nature and object of the inquiry is altogether different from that in a criminal case and any decision arrived at in the writ petition on this issue cannot have any relevance much less any binding effect, in any criminal proceeding which may be taken against a particular police officer. This Court further clarified that in a given case, if the investigation is still proceeding, the Court may even defer the inquiry before it until the investigation is completed or if the Court considered it necessary in the interests of justice, it may postpone its inquiry until after the prosecution was terminated, but that is a matter entirely for the exercise of the discretion of the Court and there is no bar precluding the Court from proceeding with the inquiry before it, even if the investigation or prosecution is pending.

34. In *Rudul Sah v. State of Bihar* [(1983) 4 SCC 141 : 1983 SCC (Cri) 798] the petitioner therein approached this Court under Article 32 of the Constitution alleging that though he was acquitted by the Sessions Court on 3-6-1968, he was released from jail only on 6-10-1982, after 14 years, and sought compensation for his illegal detention. This Court while recognising that 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, civil and criminal, raised for consideration the important question as to whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for payment of money, as compensation for the deprivation of a fundamental right. This Court answered the question thus while awarding compensation: (SCC pp. 147-48, para 10)

“Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringement of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to

compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

Rudul Sah [(1983) 4 SCC 141: 1983 SCC (Cri) 798] was followed in Bhim Singh v. State of J&K [(1985) 4 SCC 677: 1986 SCC (Cri) 47] and Peoples' Union for Democratic Rights v. Police Commr. [(1989) 4 SCC 730: 1990 SCC (Cri) 75]

35. The law was crystallised in Nilabati Behera v. State of Orissa [(1993) 2 SCC 746: 1993 SCC (Cri) 527]. In that case, the deceased was arrested by the police, handcuffed and kept in police custody. The next day, his dead body was found on a railway track. This Court awarded compensation to the mother of the deceased. J.S. Verma, J. (as he then was) spelt out the following principles:

"[A]ward of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.

(SCC p. 758, para 10)

... enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention.

... '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 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 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 the 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. (SCC pp. 762-63, paras 16-17)"

(emphasis supplied)

36. Dr. A.S. Anand, J., (as he then was) in his concurring judgment elaborated the principle thus:

"[C]onvicts, prisoners or undertrials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental rights by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody.

(SCC p. 767, para 31)

The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by [the

Supreme] Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. 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 which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

(SCC pp. 768-69, para 34)"

37. In *D.K. Basu v. State of W.B.* [(1997) 1 SCC 416 : 1997 SCC (Cri) 92] this Court again considered exhaustively the question and held that monetary compensation should be awarded for established infringement of fundamental rights guaranteed under Article 21. This Court held:

"Custodial violence, including torture and death in the lock ups, strikes a blow at the rule of law, which demands that the powers of the executive should not

only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law-enforcing officers is a matter of deep concern in a free society.

(SCC p. 424, para 9)

Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become lawbreakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? ... The answer, indeed, has to be an emphatic 'No'.

(SCC p. 429, para 22)

Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third-degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third-degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it."

38. It is thus now well settled that the award of compensation against the State is an appropriate and

effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure."

39. This takes us to the next question as to whether compensation should be awarded under Articles 32/226 for every violation of Article 21 where illegal detention or custodial violence is alleged."

16.2. The Apex Court in **S. NAMBI NARAYANAN v. SIBY**

MATHEWS⁶ has held as follows:

"....

38. Reputation of an individual is an insegregable facet of his right to life with dignity. In a different context, a two-Judge Bench of this Court in *Vishwanath Agrawal v. Sarla Vishwanath Agrawal* [*Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, (2012) 7 SCC 288: (2012) 4 SCC (Civ) 224: (2012) 3 SCC (Cri) 347] has observed: (SCC pp. 307, para 55)

"55. ... reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity."

39. From the aforesaid analysis, it can be stated with certitude that the fundamental right of the appellant under Article 21 has been gravely affected. In this context, we may

⁶ (2018) 10 SCC 804

refer with profit how this Court had condemned the excessive use of force by the police. In *Delhi Judicial Service Assn. v. State of Gujarat* [*Delhi Judicial Service Assn. v. State of Gujarat*, (1991) 4 SCC 406], it said: (SCC pp. 454-55, para 39)

"39. ... The main objective of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect the citizens' life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender. The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of police officers and police excesses in dealing with the law and order situation have been subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police ... [and it] must bear in mind, as held by this Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated."

40. If the obtaining factual matrix is adjudged on the aforesaid principles and parameters, there can be no scintilla of doubt that the appellant, a successful scientist having national reputation, has been compelled to undergo immense humiliation. The lackadaisical attitude of the State Police to arrest anyone and put him in police custody has made the appellant to suffer the ignominy. The dignity of a person gets shocked when psycho-pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy. We are absolutely conscious that a civil suit has been filed for

grant of compensation. That will not debar the constitutional court to grant compensation taking recourse to public law. The Court cannot lose sight of the wrongful imprisonment, malicious prosecution, the humiliation and the defamation faced by the appellant.

41. In *Sube Singh v. State of Haryana* [*Sube Singh v. State of Haryana*, (2006) 3 SCC 178: (2006) 2 SCC (Cri) 54], the three-Judge Bench, after referring to the earlier decisions, has opined: (SCC pp. 198-99, para 38)

“38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure.”

42. In *Hardeep Singh v. State of M.P.* [*Hardeep Singh v. State of M.P.*, (2012) 1 SCC 748: (2012) 1 SCC (Cri) 684], the Court was dealing with the issue of delayed trial and the humiliation faced by the appellant therein. A Division Bench of the High Court in intra-court appeal had granted [*Hardeep Singh Anand v. State of M.P.*, 2008 SCC OnLine MP 501: 2008 Cri LJ 3281] compensation of Rs 70,000. This Court, while dealing with the quantum of compensation, highlighted the suffering and humiliation caused to the appellant and enhanced the compensation.

43. In the instant case, keeping in view the report of CBI and the judgment rendered by this Court in *K. Chandrasekhar* [*K. Chandrasekhar v. State of Kerala*, (1998) 5 SCC 223: 1998 SCC (Cri) 1291], suitable compensation has to be awarded, without any trace of

doubt, to compensate the suffering, anxiety and the treatment by which the quintessence of life and liberty under Article 21 of the Constitution withers away. We think it appropriate to direct the State of Kerala to pay a sum of Rs 50 lakhs towards compensation to the appellant and, accordingly, it is so ordered. The said amount shall be paid within eight weeks by the State. We hasten to clarify that the appellant, if so advised, may proceed with the civil suit wherein he has claimed more compensation. We have not expressed any opinion on the merits of the suit."

16.3. The Apex Court in **DAUDAYAL v. STATE OF RAJASTHAN**⁷, considers the entire spectrum of the law with regard to grant of compensation on illegal arrest. The Apex Court holds as follows:

"....

12. Having considered instances of award of compensation as above, as also the discussion preceding that we are of the considered view that the appellant is entitled to compensation for the twenty-four days of illegal custody suffered by him at the hands of the respondent State. The liberty of an individual is not a trivial matter. The State cannot continue curtailing the same in the face of a court order, on account of its slow bureaucratic processes of taking decisions whether to file appeals in a particular matter or not. If such a view is agreed to by us, it would amount to the liberty of a person being placed sub-par to the decision whether or not to file an appeal which is purely an administrative call. That cannot be countenanced. We may only observe that in *BaradakantaMisra v. Bhimsen Dixit*, it has been observed by a Bench of three Judges that merely because a certificate of appeal had been sought from the High Court

⁷ 2026 SCC OnLine SC 993

against an order and the same was pending, the binding character of the High Court order does not lose its lustre. This would squarely apply in this case. Once the detenue has been ordered to be released, the same has to be followed no matter what. The only scenario in which it would not be so done was if a superior Court has granted stay in the matter. Just because a person had been convicted does not mean that his rights weigh less on the scales of justice. We say so for the reason that the due process of verification of sureties had already taken place and despite the same there is an unexplained delay. This Court is oblivious of the fact that such official processes do require some time however, it is incumbent upon the State to ensure its processes do not negatively impact an individual who has secured his liberty.

(Emphasis supplied at each instance)

The Apex Court holds that the appellant therein was entitled to compensation for 24 days of illegal custody suffered by him at the hands of the State. It holds that liberty of an individual is not a trivial matter. The State cannot curtail such liberty. Compensation to the tune of ₹11/- lakhs for illegal detention of the appellant therein for 24 days is awarded.

17. On a blend of the judgments rendered by the Apex Court as noticed supra coupled with the fact that this court has held that the arrest of the petitioner is illegal, compensation, **in such cases, is not awarded as largesse, nor as an act of sympathy; it is**

granted as a constitutional balm for the violation of fundamental rights, as a public law remedy intended both to redress the injury suffered by the victim and to remind the State that abuse of power carries consequences. Therefore, the petitioner, having suffered unlawful deprivation of liberty and alleged custodial assault, becomes entitled to consideration for grant of compensation commensurate with the injury inflicted upon his person, dignity, and constitutional rights.

18. The Apex Court has, in unmistakably strong terms, deprecated the pernicious tendency of "arrest first and investigate later," observing that such an attitude is not merely undesirable but despicable. The Court has cautioned that arrest has, at times, become a convenient weapon in the hands of police officers who either act without requisite sensitivity to constitutional values or, worse, are driven by oblique motives. Those observations, with striking aptness, apply to the case at hand.

19. The arrest of the petitioner stands as a glaring affront to Article 21 of the Constitution of India. By such

unlawful deprivation of liberty, the petitioner was not merely detained; he was subjected to indignity, humiliation, and the trauma that inevitably accompanies the coercive arm of the State being unleashed without lawful justification. The conduct of the police, in the case at hand, is in brazen violation of the safeguards and guidelines painstakingly chiselled by the Apex Court, commencing from **D.K. BASU** and continuing through **SATENDER KUMAR ANTIL**. There is a flagrant and conscious infraction of the statutory mandate embodied in Sections 41 and 41-A of the Code of Criminal Procedure, 1973. The police, under no circumstance, can be permitted to flout the law with such brazen proclivity, for to condone such conduct would be to legitimize arbitrariness under the cloak of investigation.

20. The Apex Court has repeatedly postulated that where the State and its agents transgress constitutional boundaries and inflicts injury upon the liberty of a citizen, constitutional Courts cannot remain mute spectators. The violation itself compels judicial intervention. Constitutional Courts have consistently taken note of the suffering,

indignity, and humiliation inflicted upon citizens at the hands of the agents of the State. The Courts have held that citizens who are subjected to unlawful arrest, illegal detention, or custodial excess are entitled to compensation as an immediate constitutional remedy, while preserving their liberty to seek further damages before a competent civil Court, under private law. The Apex Court has described such compensatory jurisprudence as a redeeming feature - **an acknowledgment that mere declaration of illegality is often insufficient to repair the injury inflicted upon fundamental rights.**

21. In the case at hand, in view of the preceding analysis, the arrest of the petitioner is held to be manifestly illegal and in patent violation of the guidelines laid down by the Apex Court in **ARNESH KUMAR** *supra*. The inevitable legal consequence of such a finding is that the petitioner becomes entitled to compensation payable by the State for the unlawful invasion of his liberty and dignity. This Court deems it appropriate to assess such compensation at ₹5,00,000/-, to be paid by the State to the petitioner.

22. The award of compensation herein, however, shall not operate as a bar to the petitioner pursuing any additional claim for damages before a competent civil Court in enforcement of a private law remedy. The present compensation is, but a constitutional acknowledgment of the wrong suffered; it neither exhausts nor extinguishes the petitioner's remedies in private law.

23. On all the aforesaid analysis, the **summation** would be:

- (a) *There is no warrant of interference at the stage of crime, in the result, the prayer with regard to quashing of the crime is sans acceptance.*
- (b) *The arrest of the petitioner is declared illegal.*
- (c) *The petitioner becomes entitled to compensation for such illegal arrest.*

Merely because the Embassy of the United States of America or any other country would communicate a complaint to the investigating agencies of this Nation, it would not mean that the fundamental rights of the citizens of the Nation should be bartered away.

24. For the praedictus reasons, the following: -

ORDER

- (i) Criminal Petition is **allowed in part.**
- (ii) The arrest of the petitioner is declared illegal.
- (iii) The petitioner becomes entitled to compensation of ₹5,00,000/- on such illegal arrest.
- (iv) The State shall pay the aforesaid compensation within four weeks from the date of receipt of a copy of this order.
- (v) The challenge to FIR in Crime No.0034 of 2026 dated 18-04-2026 registered at Kutta Police Station, Kodagu District, fails. It is imperative that the investigation should continue.
- (vi) Liberty is reserved to the petitioner to knock at the doors of this Court, in the event he is aggrieved with the final report.

Consequently, I.A.No.1 of 2026 also stands disposed.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

Bkp
CT:MJ