



Judgment

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

CRIMINAL WRIT PETITION NO.389 OF 2024

Vaibhav s/o Mahendrasingh Raghuwanshi,
age 26 years, occupation: student,
r/o behind Government Doodh Dairy,
Pimple Nagar, Akola, district Akola. **Petitioner.**

:: VERSUS ::

1. State of Maharashtra,
through the Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. Police Station Officer,
Police Station Khadan,
Akola, district Akola.
3. Nilesh Karandikar,
aged major, occupation: Assistant Police
Inspector,
c/o Police Station Khadan,
Akola, district Akola.
4. Dhananjay s/o Mahadevrao
Sayare, aged major, occupation: police
Inspector,
c/o Police Station Khadan,
Akola, district Akola.
5. Superintendent of Police,
Akola, district Akola. **Respondents.**

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Shri P.S.Tiwari, Counsel and Shri S.R.Kumbhalkar, Advocate for the Petitioner.

Shri S.S.Doifode, Additional Public Prosecutor for Respondent Nos.1, 2, & 5/State.

Shri S.K.Bhoyar, Counsel for Respondent Nos.3 & 4.

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CORAM : URMILA JOSHI-PHALKE & RAJ D.WAKODE, JJ.

CLOSED ON : 21/08/2026

PRONOUNCED ON : 31/08/2026

JUDGMENT : (Per : URMILA JOSHI-PHALKE)

1. Heard learned counsel appearing for the parties. **Rule.**

Heard finally by consent.

2. By this petition, the petitioner is seeking directions against respondent Nos.3 and 4 to initiate an appropriate action against them for illegally detaining him and for violating his fundamental rights guaranteed under Article 21 of the Constitution of India and also compensation for his illegal detention. He is also claiming declaration that his detention by respondent Nos.3 and 4 as illegal.

3. As per contentions of the petitioner, he is a resident of Akola and a young student taking education. His father along with

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uncle runs a hotel namely “Mahakali Hotel” on NH6, beside “Ramlata Business Centre.” On 4.3.2024, as his father and uncle were not available, he was present in the hotel to look after day to day business on that day. He was also accompanied by his mother. At around 7:00 pm, respondent No.4 Dhananjay, visited the said hotel and enquired about his uncle. When the petitioner informed that his uncle is not available, respondent No.4 started demanding money saying that he has asked the uncle of the petitioner to give monthly amount to him, but his uncle is avoiding the same and, therefore, he along with respondent No.3 Nilesh came to the hotel to collect the amount. When the petitioner denied to pay the amount, respondent No.4 started abusing him and his mother and threatened them that cases would be filed against them. On asking by the petitioner whether they are having any warrant or summons to enter the hotel premises, on that, respondent Nos.3 and 4 got annoyed and forcibly entered into the hotel and caught hold the petitioner and dragged him outside the hotel and snatched his mobile-cell. He as well as his mother was abused in a filthy language and the petitioner was taken in a police vehicle.
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Subsequently, when his uncle came to the police station, respondent Nos.3 and 4 demanded amount of Rs.50,000/- for release of the petitioner.

4. It is contention of the petitioner that respondent Nos.3 and 4, who are police officers, forcibly entered into the hotel and dragged the petitioner and took him to the police station without issuing any notice or show cause notice or summons. He was detained in the police station for a whole night and subsequently, it was informed that the petitioner was arrested for committing offences under the Essential Commodities Act. On disclosure by the petitioner, that he has not committed any such offence, he was informed that he would be charged for more offences for not paying the amount. On the next morning, he was released with a direction to come along with amount of Rs.50,000/-. Thus, it is contention of the petitioner that he was illegally detained by respondent Nos.3 and 4 and his mobile-cell was also snatched by them and, therefore, the action of respondent Nos.3 and 4 being

illegal, enquiry be initiated against them, and compensation be granted to the petitioner for violation of his fundamental rights.

5. Respondent No.2 – Police Station Officer of Khadan Police Station, Akola filed his reply and denied all the contentions. It is contended that vide Crime No.217/2024 crime was registered against the petitioner on 4.3.2024 at about 22:43 hours under Sections 3 and 7 of the Essential Commodities Act as he was found using domestic gas cylinder for commercial purpose. On receipt of the secret information, respondent Nos.3 and 4 visited the hotel of the petitioner and, thereafter, the FIR came to be lodged. The petitioner was taken into custody for enquiry purpose and as his involvement is revealed, he was arrested. Respondent No.2 has denied that mobile-cell of the petitioner was seized. It is further contention of respondent No.2 that police authorities have called two independent witnesses when raid was conducted. An intimation was also given to the petitioner and, therefore, contention of the petitioner that he was illegally detained has no substance and, therefore the petition is liable to be dismissed.

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6. Respondent Nos.3 and 4 have also denied all allegations levelled against them. They have also denied that any mobile-cell was seized from the petitioner and contended that on receipt of the secret information, they have conducted a raid and the petitioner was present in the hotel. It was found that the petitioner and his other family members were using domestic gas cylinder for the purpose of commercial use. There are various offences registered against the uncle of the petitioner as well as against the petitioner also. Considering criminal antecedents against the petitioner, the present petition deserves to be dismissed.

7. Learned counsel for the petitioner submitted that as far as prayer of initiating action against respondent Nos.3 and 4 is concerned, the same is satisfied as departmental action was taken against them and increment of respondent No.3 was withheld for one year, whereas deduction of Rs.1500/- was effected from monthly pension of respondent No.4 for two years.

Now, only aspect remained in the petition is, whether the petitioner is illegally detained by respondent Nos.3 and 4 and whether he is entitled for compensation or not.

He submitted that the petitioner, who is a student, was taken into custody without complying directions in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and anr,** reported in (2022)10 SCC 51 wherein guidelines are issued as far as arrest of accused is concerned in cognizable offences. Respondent Nos.3 and 4 have violated the said guidelines and thereby violated Article 21 of the Constitution.

He submitted that in departmental enquiry, chargesheet was issued against respondent Nos.3 and 4 wherein respondent No.3 was charged that mobile-cell of the petitioner was not seized by drawing seizure panchanama and kept along with him and was not handed over to the petitioner.

Whereas, respondent No.4 was charged with misconduct that on 4.3.2024, when the offence was registered against the

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petitioner vide Crime No.217 of 2024, grounds of arrest were not communicated to the petitioner, which is requirement under Section 41 of the CrPC.

The mobile-cell of the petitioner was not seized by drawing seizure panchanama and was kept in their custody. When the petitioner has preferred an application for return of the property, i.e. mobile cell, a false report is filed before the trial court that the mobile-cell is not seized.

Similarly, while filing affidavit-in-reply before this court, similar statement was made that the mobile-cell was not seized and thus committed the misconduct. Respondent Nos.3 and 4 both were held guilty for the said misconduct and punished as the aforestated.

He submits that as far as respondent No.4 is concerned, against whom initially, crime was registered under Section 354 of the IPC wherein this court has rejected his anticipatory bail. His anticipatory bail was also rejected by the Hon'ble Apex Court and

subsequently, by entering into the compromise with victim therein, the FIR got quashed by him. Thus, the conduct of respondent No.4 creates a doubt about his integrity.

He submitted that as charges against respondent Nos.3 and 4 are proved during the departmental enquiry, it is sufficient, at this stage, to show that there is violation of Article 21 of the Constitution and, therefore, the petitioner is entitled for compensation.

8. Per contra, learned Additional Public Prosecutor for the State has strongly opposed the said contentions and submitted that general diary entry specifically shows that the petitioner was informed that crime was registered against him under Sections 3 and 7 of the Essential Commodities Act. Thus, respondent Nos.3 and 4 have complied with directions of the Hon'ble Apex Court before arresting the petitioner and, therefore, no misconduct is established by the petitioner. As far as action against respondent Nos.3 and 4 for keeping the mobile-cell is concerned, it is already initiated and they were punished. Therefore, grievance of the

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petitioner is already redressed by respondent Nos.1 and 2. Hence, the petition deserves to be dismissed.

9. After hearing both sides and perusing the entire record, it reveals that there is no dispute that the father and uncle of the petitioner were owners of “Mahakali Hotel.” As per contention of the petitioner, when he was present in the hotel, at around 7:00 pm, respondent No.4 along with respondent No.3 visited his hotel and demanded the amount and snatched his mobile-cell. Admittedly, the FIR was lodged against the petitioner on 4.3.2024 at about 22:43 under Sections 3 and 7 of the Essential Commodities Act for which punishment less than seven years is provided. General diary entry dated 4.3.2024 was also taken at about 22:43. The contention of respondent Nos.3 and 4, that they received a secret information, is not substantiated by either station diary entry or general diary entry or the phone register. The general diary entry also nowhere discloses that grounds of arrest are communicated to the petitioner before he is shown to be arrested. The general diary entry taken at about 22:43 pm

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nowhere discloses the grounds of arrest are communicated to the petitioner. The record shows that the petitioner immediately made a complaint to superior officers of respondent Nos.3 and 4. Initially, there was no action against respondent Nos.3 and 4. The petitioner has sought information under the Right to Information Act against respondent Nos.3 and 4. An irresponsible conduct of respondent No.5 is also noted by this court in order dated 3.12.2024. Subsequently, departmental enquiry was initiated against respondent Nos.3 and 4 in view of order of this court dated 6.1.2025.

10. Now, questions before us are,

(1) Whether the act of respondent Nos.3 and 4 is sufficient to hold that they have violated Article 21 of the Constitution of India when they arrested the petitioner?

(2) Whether it is established that respondent No.3, without any authority and without following due procedure of law,

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seized the mobile-cell of the petitioner and did not return it to him on his release?

11. Before referring concerned provisions, it is necessary to consider guidelines issued by the Hon'ble Apex Court in the case of **Satender Kumar Antil (supra)**. These directions are given for investigation agencies and also for the court.

12. Section 41 of the Cr.P.C., dealing with when police may arrest without warrant, reads as under:

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

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

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

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

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

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

(b) for proper investigation of the offence; or

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

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

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

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more

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than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;

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

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

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

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

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

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

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

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

13. It is further observed by the Hon’ble Apex Court while incorporating Section 41 and 41-A of the Cr.P.C., which reads as under:

“23. Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offense, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a

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necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured.

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

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

26. Section 41-A deals with the procedure for appearance before the police officer who is required to issue a notice to the person against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists that he has committed a

cognizable offence, and arrest is not required under Section 41(1). Section 41-B deals with the procedure of arrest along with mandatory duty on the part of the officer.”

14. On the scope and objective of Section 41 and 41-A, the Hon’ble Apex Court by referring Article 21 of the Constitution observed that, these Sections are facets of Article 21 of the Constitution and referred the judgment of **Arnesh Kumar vs. State of Bihar, (2014)8 SCC 273**, which is reproduced as under:

“7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the

offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

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

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer

has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC.

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

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

8.2. Before a Magistrate authorises detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If

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the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused.

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

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writing that the Magistrate will authorise the detention of the accused.

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

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

shall be subject to the same scrutiny by the Magistrate as aforesaid.”

15. Thus, while interpreting the provisions, the Hon’ble Apex Court specifically observed that the consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offense. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail. Moreover, the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offense alleged is more than seven years, among other reasons.

16. Admittedly, for offences registered against the petitioner under the provisions of the Essential Commodities Act, punishment for offence under Section 3 punishable under Section 7 is imprisonment upto 3 years which may extend upto 7 years.

17. Section 41 deals with the procedure when police may arrest without warrant. Section 41-A deals with notice of appearance before the Police Officer.

18. Here, in the present case, neither notice is issued under Section 41 or 41-A to the petitioner.

19. The Hon'ble Apex Court in the decision in the case of **Satender Kumar Antil** (supra) observed that, "even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offense, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason

to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest.”

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

21. It further reveals from the record that the petitioner has filed an application before learned Magistrate at Akola to return of his mobile-cell wherein respondent Nos.3 and 4 filed a reply stating that they have not seized any such mobile-cell. The said contention was not accepted by learned Magistrate and learned Magistrate by order dated 2.7.2024 directed the investigating agency to hand over the said mobile-cell to the petitioner. Despite the said order was passed on 2.7.2024 by learned Magistrate at Akola, while filing reply, before this court, respondent No.3 on 17.12.2024 on affidavit stated that false allegations are made against him. In fact, they have not seized any mobile-cell and the petitioner was never detained in the custody.

The similar reply is filed by respondent No.4 in his affidavit on 18.12.2024.

22. Thus, it is apparent that respondent Nos.3 and 4 have made false statements before this court.

23. Subsequently, general diary entry was taken by respondent Nos.3 and 4 stating that while releasing the petitioner, he was asked to take his mobile-cell, but he has not taken the said mobile-cell and it was kept in the police station itself. This fact itself shows that though the mobile-cell was in the custody of respondent Nos.3 and 4, they have given the false information to the court that they have not seized mobile. This fact was established during the departmental enquiry against respondent Nos.3 and 4. The final order passed by the Superintendent of Police itself shows that the charge of keeping the mobile-cell without drawing seizure panchanama is established against respondent Nos.3 and 4.

24. Thus, it is established by the petitioner that respondent Nos.3 and 4 not only seized the mobile-cell but also made a false statement before this court while filing their replies. Respondent Nos.3 and 4 specifically stated that the mobile-cell of the petitioner was neither seized by respondent No.3 nor respondent No.4 in the said offence. The petitioner has refused to take away his mobile-cell and intentionally kept his mobile cell while he was leaving the police station. Admittedly, no notice was given to the petitioner immediately after his release by respondent Nos.3 and 4 asking him to take the mobile-cell and therefore, contention of respondent Nos.3 and 4 that it was the petitioner who has kept the mobile-cell in the police station is not acceptable.

25. An attempt was made by respondent Nos.3 and 4 to show that various offences are registered against the father and uncle of the petitioner. As far as the petitioner is concerned, only this offence was registered against him. There was no criminal antecedents as such against him. As already observed, during the departmental enquiry the charge against respondent Nos.3 and 4

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to the extent that they have kept the mobile-cell of the petitioner without drawing seizure panchanama is established and, therefore, they were punished. Increment of respondent No.3 was withheld for one year, whereas deduction of Rs.1500/- was effected from monthly pension of respondent No.4 for two years.

26. The charge against respondent No.4, that he has not followed the guidelines of the Hon'ble Apex Court while arresting the petitioner, is also established.

27. In the light of the above said facts, which admittedly disclose violation of the guidelines issued by the Hon'ble Apex Court in the case of **Satender Kumar Antil**, grounds raised by the petitioner are that though the offence is cognizable, it is bailable one and the petitioner without notice under Section 41 of the CrPC was arrested without communicating grounds of arrest to him and he was detained in bailable offence.

28. The observations of the Superintendent of Police, while conducting the enquiry, are that respondent No.4 has not observed

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guidelines issued and admittedly has not communicated grounds of arrest to the petitioner, which is clearly violation of his personal liberty under Article 21 of the Constitution of India.

29. Here, in the present case, neither general diary entry nor arrest panchanama is placed on record to show that any grounds of arrest were communicated to the petitioner before he was taken into custody and brought to the police station. There is no entry as to receipt of the secret information also.

30. Now, question before us is, whether the petitioner is entitled for compensation or not and if it is held that the petitioner is entitled for compensation, what would be the amount of compensation.

31. At this stage, observations of the Hon'ble Apex Court in the case of **Rudul Sah vs. State of Bihar & Anr.**, reported in (1983) 4 SCC 141, are relevant, which are follows:

“Although Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be

enforced efficaciously through the ordinary processes of courts, such as money claims, the Supreme Court in exercise of its jurisdiction under this Article can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The petitioner can be relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But where the court has already found, as in the present case, that the petitioner's prolonged detention in prison after his acquittal was wholly unjustified and illegal, there can be no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of the Supreme Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly Violated. Article 21 will be denuded of its significant content if the power of the Supreme Court were limited to passing orders of release from illegal detention. The only effective method open to the judiciary to prevent violation29/-

of that right and secure due compliance with the mandate of Article 21, is to mulct its violators in the payment of monetary compensation. The right to compensation is thus some palliative for the unlawful acts of instrumentalities of the State. Therefore, the State must repair the damage done by the officers to the petitioner's rights. It may have recourse against these officers."

32. In the decision of **D.K.Basu vs. State of W.B., 1997 CRI.L.J. 743**, wherein the Hon'ble Apex Court issued guidelines as preventive measure to the Police Officers regarding the arrest of the citizens.

33. The Hon'ble Apex Court has observed in paragraph No.44, as under:

"44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages of tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established

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infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.”

34. While summing up, the Hon’ble Apex Court further observed in paragraph No.55, as under:

“55. Thus, to sum up, it is now a well accepted proposition in most of the jurisdiction, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim

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

35. This aspect is also considered by the Division Bench of this Court in the case of **Veena Sippy Major vs. Narayan Dumbre, then Senior Inspector of Police & Ors., reported in 2012 SCC OnLine Bom 339**, wherein in paragraph No.10 the Division Bench of this Court has referred the decision of the Hon’ble Apex Court in the case of **D.K.Basu vs. State of W.B.** (supra), wherein in paragraph No.35, the Apex Court observed as under:

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

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

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

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

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

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

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

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

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

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

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

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

36. In the decision of **D.K.Basu** (supra), the Hon’ble Apex Court has reiterated that in case a person is illegally detained without complying mandatory directions laid down, aspect of compensation requires to be dealt with.

37. In **Veena Sippy Major** (supra), in paragraph No.25, the Division Bench of this Court has referred the decision of the

Hon'ble Apex Court in the case of **Neelabati Behera (Smt) vs. State of Orissa & Ors., (1993) 2 SCC 746**, wherein in paragraph Nos.17 and 18 the Apex Court observed as under:

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

to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in *Rudul Sah* and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

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

38. Similarly, this Court in **Veena Sippy Major** (supra) also considered the usual discussion on the topic on strict liability for violation of fundamental right enabling award of compensation refers the relevant portion of *Ratanlal & Dhirajlal's Law of Torts*, 22nd Edition, 1992 at pages 44 to 48.

39. It is observed by this Court, in the light of the judgment of **Neelabati Behera (Smt)** (supra) that, if the guarantee that deprivation of life and personal liberty cannot be made except in
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accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate. It was further observed that the power and jurisdiction of this Court and the High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution of India to a victim whose fundamental rights under Article 21 of the Constitution are violated are thus, well- established.

40. As far as respondent No.4 is concerned, previously also, the offence was registered against him vide Crime No.215 of 2024 under Sections 294, 323, 354, 354-A, 354-B, 354-D, 392, 452, 506-B, and 511 of the IPC. Respondent Nos.3 and 4 are police officers

who are assigned with duty of carrying out the investigation and to protect rights of citizens. They have failed in their fundamental duties as police officers.

41. The Hon'ble Apex Court in the case of **State of Jharkhand vs. Sandip Kumar, reported in 2024 ALL SCR 740** observed that, "a police officer charged with the fiduciary duty of carrying forward the investigation to its rightful conclusion so as to punish the guilty. The respondent is alleged to have failed in this fundamental duty as a police officer. This consideration must necessarily weigh in with the nature of the offences and the possible punishment therefor. Presumptions and other considerations applicable to a layperson facing criminal charges may not carry the same weight while dealing with a police officer who is alleged to have abused his office."

42. In view of the above observations, admittedly, the act of respondent Nos.3 and 4 is contrary to the same which is established during the departmental enquiry against them though punishment as aforesaid is imposed on them but it would not

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compensate pain and agony which is undergone by the petitioner. Admittedly, the said pain and agony cannot be compensated in monetary terms. However, to give him some solace his prayer for granting compensation requires to be considered.

43. The present Respondent No.3 is a Police Officer well versed with the legal provisions holding public office abused his position which is a matter of great public concern. When the police is violator of the law whose primary responsibility is to protect the law, the punishment for such violation has to be proportionately stringent so as to have effective deterrent effect and instill confidence in the society. The Respondent Nos.3 and 4 who appears to be a violator of the law who had primary responsibility to protect and uphold the law, and thereby mandating the punishment for such violation to be proportionately stringent so as to have effective deterrent effect and instill confidence in the society.

44. It may not be out of context to remind that the motto of Maharashtra State Police is “Sadrakshnaya Khalanighrahanaya”

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(Sanskrit : “To protect good and to punish evil”), which needs to be respected. Those, who are called upon to administer the criminal law, must bear, in mind, that they have a duty not merely to the individual accused before them, but also to the State and to the community at large. Such incidents involving Police usually tend to deplete the confidence in our criminal justice system much more than those incidents involving private individuals. We must additionally consider this aspect while considering the present Petition.

45. In the present case, respondent Nos.3 and 4 who are the Police Officers whose primary responsibility was to protect the and uphold the law. However, not only they have violated the law but also violated guidelines issued by the Hon’ble Apex Court as to the arrest.

46. We are of the view that in the instant case also a similar order as one passed in **Rudul Sah** (supra), will meet the ends of justice. Then the High Court has also directed that an entry should be made in his service record to the effect that he was guilty of violation of

fundamental right of an undertrial prisoner. So far this direction is concerned, it is submitted that such an adverse entry cannot straightway be made without giving the Inspector of Police, appellant 2 herein, an opportunity of being heard.”

47. In the light of the above observations, in the present case also, respondent Nos.3 and 4 have acted as police officers and exceeded their limits and thus committed an error in arresting the petitioner without following due provisions of law.

48. Thus, in view of the observations of the Hon’ble Apex Court in the case of **State of Maharashtra & ors. vs. Ravikant S. Patil, (1991) 2 SCC 373**, in the present case also, the State can be directed to pay compensation to the present petitioner for the act of respondent Nos.3 and 4 as they have held guilty of violation of the fundamental rights of the present Petitioner.

49. In view of that, we proceed to pass following order:

ORDER

(1) The Writ Petition is partly **allowed**.

(2) The compensation Rs.2.00 lacs shall be paid by respondent No.1 to the present petitioner within a period of eight weeks from today.

(3) The amount of compensation be deposited in this Court.

(4) As far as the other prayer of the petitioner, as to directions to the enquiry, is concerned, the departmental enquiry against respondent Nos.3 and 4 is already held and the punishment for their misconduct is already imposed and, therefore, the said prayer made by the petitioner in the prayer clauses of the petition is hereby rejected.

Rule accordingly. Petition stands **disposed of**.

JUDGE

JUDGE

!! BrWankhede !!