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**IN THE COURT OF CHIEF METROPOLITAN MAGISTRATE, JAIPUR
METRO-II**

Presiding Officer : Poona Ram Godara RJS

FIR No. 10/2024 P.S. SOG, Raj. Jaipur

Under Section 419, 420, 120B IPC and Section 4,5,6 Rajasthan Public Examination (Prevention of unfair means) Act and 66D IT Act.

**Application u/s 41A and 57 of Code of Criminal
Procedure 1973.**

Present : Mr Prahalad Bajiya Prosecution Officer for the State

Advocate Mr Vedant Sharma for accused Miss Manju,
Subhash,Dinesh and Abhishek

Advocate Mr Mohd Zaheer for accused Miss Harkhu

Advocate Mr Vipul Sharma for accused Rakesh

Advocate Mr Dinesh Choudhary for accused Surendra and
Manish

Advocate Mr Shakti Singh for accused Jairaj Singh

Advocate Mr Vijendra Yadav for accused Chetan Singh

Advocate Mr Birbal Khilery for accused Mala Ram

Advocate Mr Kailash Choudhary for accused Ajay

Date - 12.04.2024

01. The brief facts of this case are that one accused named Rajesh used to run a school Ravindra Bal Bharti Sr. Sec. School, Shantinagar, Hasanpura, Jaipur. This Rajesh came in contact with the so called kingpin of organized gang of paper leak, Jagdish and other members of this gang i.e. Unique @ Pankaj and Shivratan. They have been in contact of each other for last 6 - 7 years in connection with common interest of earning money by way of leaking papers of several competitive examinations and supplying these papers to aspirants. In 2021, Rajasthan Public Service Commission issued an advertisement for recruitment of Sub-Inspector/ Platoon Commander in Rajasthan



Police. This exam was conducted on 13th, 14th and 15th September 2021. First paper was in first innings from 10:00 am to 12:00 pm and second paper was from 3:00 pm to 5:00 pm on each day. These accused hatched a conspiracy in order to get the paper before the scheduled time of the examination. On 13th September 2021 they did not succeed but on 14th and 15th September 2021, they obtained the paper from strongroom i.e. the office of the school owner Rajesh. They supplied this paper to various candidates through the various handlers in different parts of Rajasthan. **The accused persons Miss Harkhu, Miss Manju, Surendra Kumar, jairaj Singh, Subhash, Dinesh, Chetan Singh, Mala Ram, Rakesh, Ajay, Manish and Abhishek** obtained the copies of papers and they used the unfair means and they succeeded in the exam in question and joined the training in Rajasthan Police Academy. The so called main kingpin Jagdish was arrested in FIR No. 540/20 in SOG and investigating officer of that case Mr. Niyaj Mohammed got all this information about the scam in the exam in question and he got this case registered as FIR No. 10/24 u/s 419,420, 120B IPC and u/s 4,5,6 The Rajasthan Public Examination (Prevention of unfair means) Act 1992 and 66D IT Act in SOG. During the course of investigation, earlier 14 accused persons were arrested and some other persons were also arrested. In the latest event, these 12 accused persons have been arrested. The arguments from the first day on behalf of all these accused persons have been raised by the Ld. Counsels that the detentions of all these accused person is illegal. The provision of section 41A and mandate of Hon'ble Supreme Court in case of Arnesh Kumar have not been complied with. The arresting time was mentioned very late in arrest memo but de facto they had ben detained too early and they were not produced before Magistrate within the prescribed time of 24 hrs.

02. Besides these 12 accused persons, many other accused persons have been arrested. Now the custody of these 12 accused persons is in question and controversy. On the day of 08.04.2024 when accused persons were produced before this court for the second time, this



written application (which was registered as criminal miscellaneous application) was filed by five accused persons Dinesh, Subhas, Abhishek, Manju and Rakesh through their advocate Mr. Vedant Sharma and Mr. Vipul Sharma. All other accused persons also requested the same prayer. **This application to be registered as criminal miscellaneous application.** In this application, the main contentions from these applicants are that they were arrested in very hasty manner and there was no need of arrest. The notices u/s 41A were not served upon them. They were illegally detained for more than 30 hours in police custody and after that the formal arrest memos were prepared. That illegal custody also amounts to arrest and this illegal detention cannot be authorized by this court under section 167 CrPC. The fundamental rights enshrined in Article 14, 21 and 22 have been grossly violated and the statutory provisions u/s 41A and 57 Cr.PC have also been transgressed. No sooner did the SOG take these accused persons in their custody from RPA than arrest or detention started. The police custody cannot be extended on the basis of illegal detention and consequently these accused persons are liable to be set free on their own liberty at once.

03. It has been further submitted that earlier this court ordered DGP Rajasthan to conduct an enquiry regarding illegal detention but this special operations group (SOG) is showing audacity towards the constitutional provisions, the judgments of the Honorable Supreme Court, various High Court and the order of this court. They are also challenging the authority of law and they don't have any regard to the constitution and fundamental rights. They are adopting this course as a routine manner and the agency has been flouting all the fundamental rights and other statutory rights. This agency is conducting the investigation not according to the procedure laid down in the law but the investigation is being carried out according to the whims and fancies of the investigating officer and other officers of monitoring team. They are just trying to pacify the political will and this matter is nothing but a political matter in which setting hue and cry in media is the only goal of this agency. Most of the accused



persons are being targeted only because of this fact that they belong to a certain caste or community. Earlier when this court ordered for an enquiry, at that time investigation was at very nascent stage but now investigation is not at its threshold, all the king pins have been investigated. This court should not delegate its function of adjudication again in the form of enquiry. The frequent violations taking place is the clear example of this fact that SOG has no fear about the enquiry which will be conducted by the DGP. The fundamental rights of the accused persons are at stake. Irrespective of the seriousness of the offence, every accused person is entitled for compliance of fundamental rights in their favour.

The other accused persons have also demanded the same relief through their oral submissions. In their support they relied upon the following precedents:

1. *Ashok Hussain Allah Detha @ Siddique and Anr. v/s Assistant Collector of customs (P.) Bombay and Anr. 1990 CRI. L. J. 2021 Bombay High Court*
2. *Kultej Singh v/s Circle Inspector of Police and Ors. 1992 CRI. L. J. 1173 Karnataka High Court.*
3. *CBI v/s Kishore Singh and Ors. 2011 CRI. L. J. (Supp) 438 SC*
4. *Arnesh Kumar v/s State of Bihar and Anr. 2014 Cri. Appeal No. 1277 of 2014*
5. *Satendra Kumar Antil v/s CBI and Anr. SLP Cri. 5191 of 2021*
6. *Sakiri Vasu vs State of UP (2008) 2 SCC 409*

During the course of arguments the same contentions and allegations were put forth in detailed and elaborated way.

05. No reply has been filed by SOG despite giving the sufficient opportunity. Investigating officer and prosecution officer on the behalf of state of Rajasthan have vehemently opposed these contentions and submitted that investigating agency has the right to interrogate the suspect persons. The suspect persons cannot be arrested before



verifying the facts and allegations. It takes time to verify the facts and allegations. In this case, number of accused persons was very high and other persons were also in police custody when these arrests were made. The custodial interrogation is necessary to unearth the truth. The hands of investigating agencies cannot be tied. Investigation is the domain of police or other agency and in this investigation process court interference is not required. These persons used to live in barracks in RPA and the same facility of beddings and barracks were provided to them in SOG police station. **These accused persons were brought in SOG headquarter on April 2, 2024 but they were kept in SOG police station till April 3, 2024 and on April 3, 2024 from 3:30 PM to 05:42 PM,** they were arrested and till then their liberty of movement was not curtailed. They were free to go beyond the boundaries of SOG police station. They kept walking and sitting here and there in the SOG police station and barracks. They also slept in the police station during the night time and their fundamental rights or any other statutory rights had not been violated in any manner. The investigating agency is trying its best to unearth the various layers of this complicated exam scam which is related to the future of millions of aspirants of this state and country as well. This offence is of very serious nature. SOG is working hard day and night to unfold the various chapters. These candidates who used the unfair means and got the exam paper before the starting time of exam are being arrested. Such applications are being filed just because of creating pressure on investigating agency. An application of the same nature was filed by other accused in which this court ordered for an enquiry. The enquiry is under way. The facts of the application is not different than that of earlier one. This application has no merit in itself and therefore this application is liable to be rejected. Ultimately it was requested to dismiss this application.

06. Non compliance/compliance of Section 41A- This is the major contention raised from all the accused that the offences which are alleged to have been committed by them are punishable



with the imprisonment of less than or upto 7 years. In the cases where offences alleged are punishable with less than 7 years of imprisonment, the investigating officer is duty bound to give prior notice to the accused persons and if accused persons do not comply with the terms and conditions of such notice and they fail to appear before the investigating officer then investigating officer may arrest them. They placed their reliance on two important landmark judgments of the Hon'ble Supreme Court. Section 41(1) (b) and section 41A are being reproduced as ready reference as under-

Section 41- When police can arrest- Section 41 (1) (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely :-

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

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

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

(b) for proper investigation of the offence; or

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

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

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



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

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

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

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

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officers 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 following para from ***Arnesh Kumar v/s State of Bihar*** is relevant-

Section 41 Power to arrest- Arrest fast, bringing humiliation, curtailing freedom and casting scars forever - Power to arrest breeds arrogance and



corruption to arrest first and then proceed to investigate – Despicable. No arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so Provisions of section 41 are to be scrupulously observed - Directions issued - These directions apply not only to cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, but also to 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.

Important paras from ***Satendra Kumar Antil v/s CBI*** can be extracted in the following ways-

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

Criminal Procedure Code, 1973 Sections 41, 41A and 439 Arrest and bail Even for a cognizable offense, an arrest is not mandatory. A police officer is duty-bound to record reasons for arrest in writing. Similarly, police officer shall record reasons when he/she chooses not to arrest - There is no requirement of the procedure when offense alleged is more than seven years, among other reasons Consequence of non-compliance with Section 41 shall certainly ensure to benefit of person suspected of offense - While considering application for enlargement on bail, courts will have to satisfy themselves on due compliance of this provision - Any non-compliance would entitle accused to a grant of bail. It is appropriate to direct all State Governments and Union Territories to facilitate standing orders while taking note of Standing Order issued by Delhi Police (Standing Order No. 109 of 2020), to comply with mandate of Section 41A-This would certainly take care of not only unwarranted arrests, but also clogging of bail applications before various Courts as they may not even be required for offences up to seven years.



(Paras 21, 22 and 29)

07. In the first case of *Arnesh Kumar v/s State of Bihar* the Hon'ble Supreme Court laid down the detailed guidelines and also laid down consequences for non-compliance of the provisions. In the second case *Satendra Kumar v/s CBI* the Hon'ble Supreme Court again emphasized on the compliance of section 41A in letter and spirit in order to prevent unnecessary arrest of persons in the case where offences involved are punishable with imprisonment of less than 7 years.

Section 41(1)(b) provides that where investigating officer finds that there is no need to arrest then he will record the reasons and he will issue notice u/s 41A but wherever investigating officer finds the arrest necessary then he may arrest the accused person without giving notice but he is duty bound to record the reasons of arrest and for not giving notice u/s 41A. Here in this case at hand, investigating officer recorded the reasons for not giving notice to accused persons. In fact the incident of offences was of 3 years prior to their arrests but it was shown that if they had not been arrested then there would have been greater chances of their fleeing from justice. Another possibility was that they might have eschewed from the custodial interrogation, they could have hampered proper investigation, they could have disappeared or tampered the evidence. These were the reasons recorded by the investigating officer for not giving prior notice to the accused person. In such cases, sometimes custodial interrogation becomes sine qua non for unfolding the nuances and unearthing the various layers existing in the cases. The plain language of section 41A makes it clear that notice will be given only in those cases where arrest is not required. Having the utmost respect to the law laid down in *Arnesh Kumar* case, it can be opined that there is no blanket stay under section 41A on arrest in the offences punishable upto 7 years. Reasons in checklist are required to be recorded necessarily and guidelines are to be followed. It is the domain of



investigating officer to use the power of arrest but such powers must be exercised judiciously and on the basis of settled legal principles and in strict compliance with the statutory provisions. A circular was issued in the compliance of ratio laid down in Arnesh Kumar by ADGP crime Rajasthan. Prima facie in this case, the investigating officer prepared the checklists as mandated in the cases of Arnesh Kumar and Satendra Kumar Antil and detailed reasons have been mentioned for making arrest of these accused persons. In the opinion of this court, the course adopted by investigating officer was justified in terms of compliance of section 41A. Investigating officer cannot be held responsible at this stage for non-compliance of this section or this provision. The affidavit filed earlier by IGP SOG in Hon'ble Rajasthan High Court was based upon the facts and knowledge existing for the time being. Such affidavit can not close all the doors for conducting the further investigation of the case. In this case the need of arrest was shown by SOG because reasons were recorded and therefore the requirement of giving notice was not necessary.

08. **Efforts of SOG-** So far as the hard work and unwavering commitment of SOG is concerned, this may be true that this agency and all the investigators of the agency are working day and night and they are trying to unfold all the chapter involved in this complicated issue. In fact, this case is very serious and it has far reaching catastrophic effects on the dreams of millions of aspirants appearing in competitive exams. This must be the priority that only merit must prevail in public employment and a fair exam process to be ensured. The purity and sanctity must be ensured at all levels at all cost. Agencies have to work hard in order to investigate the criminal cases but there are several procedural safeguards in the name of fundamental rights and directions passed by Honorable Supreme Court and various high courts from time to time. These procedural safeguards must be adhered to and these fundamental rights must be protected. These rights are guaranteed rights against the mighty state and the mighty state itself has undertaken this responsibility to



comply these protections. The state cannot deviate from this path. The criminals or accused persons do often deviate and break the laws but being the part of this responsible institution, investigators are bound to follow the rule of the law and the fundamental rights. On the one hand it is the pious duty of the state to ensure that no paper of any competitive exam should get leaked and paper leak free fare competitive exam to be conducted in order to ensure the level playing field to all the candidates but at the same time it is also the responsibility of state to honour the constitutional values and rights which are related to accused persons. **The democracy thrives when institutions thrive and the institutions thrive when the members of such institutions obey the laws.** So, the hard work and unwavering commitment of SOG may be appreciated but the deviation from legal framework or constitutional rights cannot be tolerated because this rule of law or right to life and personal liberty are the foundational stones of our democracy and constitution itself. The fundamental right enshrined under article 22 exclusively deals with the protection given against arrest and illegal detention. Even SOG is not above the constitution and the law. So on the pretext of nature of offence or interrogation to suspected persons or accused persons cannot absolve the investigating agency from complying these provisions.

09. **Importance of Fundamental and statutory rights-**
This para from earlier order is being reproduced. The fundamental rights in our Constitution are of paramount consideration and importance. These rights are very fundamental in their characters to ensure the minimum dignity and respect of human beings. These procedural safeguards ensure rule of law and fairness of the procedure. the procedure established by law under article 21 also postulates for just, fair and reasonable process in the trial and investigation and it vehemently opposes the arbitrariness, fancifulness and whimsical ways in procedure. **The accused persons must also be protected and these safeguards must be ensured irrespective of the nature , gravity , intensity or extensivity of**



the offence. Even a rhetoric was put forth before the court that in such cases having the extensive adverse impact on the future of the millions of aspirants of competitive examinations, the court must stand with the future of the aspirants and the court must come heavily on such accused persons. Such rhetoric cannot work in the rule of law. The courts can't get swayed with the emotions of certain factions of the society and mass media coverage. The court, being the custodian of rights of citizens must stand with and adhere to the law. If such rhetorics are to be believed as gospel truth, then there will be no need of rule of law and all these institutions established under it will lose their worth. The Court is duty bound to protect the constitutional and legal rights of each and every person including accused person at any cost. The police must be aware about the changes and developments of various extended dimensions and multi facets of personal liberty of the accused persons. Police must avoid the old style and advice of keeping the accused persons in custody for more than 24 hours in the name of interrogation or free walking in the barracks. The violation of any fundamental or statutory right is essentially antithesis to democracy, constitutionalism and core values and ethos of constitution. The rights guaranteed to the person and accused must be respected and complied with in letter and spirit. Unfortunately the SOG didn't avoid the old style and advice and SOG has fallen victim to wrong and unlawful act and advice. SOG does not want to change its illegal stand and notion about the law of arrest and detention. **Custodial investigation is valuable right of police but it includes only custody of 24 hours from arrest to production before court and further detention authorised by the court.** SOG is continuing its journey on the path built by its wrong notions of its investigators and self realised unlawful conceptions. **This is very simple law that a person arrested or detained must be produced before a court within 24 hours. There must be no 'ifs' and 'buts'.**

10. **What is Arrest ?** First of all, having regard to the peculiar facts and circumstances of this case, this court is



bound to deal with the legal meaning of arrest. Arrest is to take any person in custody of police where such person cannot move around beyond any limits set up by police. In **case of Ashok Hussain**, the arrest has been defined as follows:

The word "arrest" is a term of article. It starts with the arrester taking a person into his custody by action or words restraining him from moving anywhere beyond the arrester's control, and it continues until the person so restrained is either released from custody or, having been brought before a Magistrate, is remanded in custody by the Magistrate's Judicial Act. In substance, "arrest" is the restraint on a men's personal liberty by the power or colour of lawful authority. In its natural sense also "arrest" means the restraint on or deprivation of one's personal liberty. It stands to reason therefore that what label the investigating officer affixes to his act of restraint is irrelevant. For the same reason, the record of the time of arrest is not an index to the actual time of arrest. The arrest commences with the restraint placed on the liberty of the accused and not with the time of "arrest" recorded by the Arresting Officers.

In case of **Kultej Singh v/s Circle Inspector of Police and Ors.** the Hon'ble Supreme Court again reiterated that mere keeping the person or confine him in police station or restricting his movement within precincts of police station amounts to arrest.

In case of **CBI v/s Kishore Singh**, the Hon'ble Supreme Court convicted the police officials for keeping accused person in custody beyond 24 hours or arrest. Through



the mandate of Hon'ble Supreme Court, it is needless to elaborate the meaning of arrest. In simple terms the arrest is to confine a person under direct or indirect control or surveillance of police where physical liberty is curtailed and person cannot move beyond the certain four walls or boundaries without the permission of police. Section 46 CrPC lays down the procedure for how to arrest. This procedure sets the same meaning to arrest as mentioned above. But at the same time, the right of investigating agency to interrogate someone is also pertinent to mention here. Investigating officer is well within his domain to call any person who is acquainted with the facts of the case under section 160 CrPC and he can interrogate him.

11. Illegal Detention and violation of Article 22, 21 & 14 of The Constitution of India and section 57 Code of Criminal Procedure- Article 22 provides specific rights to arrested and detained persons, in particular the rights to be informed of the grounds of arrest, consult a lawyer of one's own choice, be produced before a magistrate within 24 hours of the arrest, and the freedom not to be detained beyond that period without an order of the of the magistrate. Section 57 CrPC lays down the same provision that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. Article 21 not only includes life and personal liberty but also mandates for just, fair and reasonable procedure. Article 14 provides the equality before law and this ensures rule of law. Any arbitrary act is regarded against the rule of law.

In this case, out of these 12 accused persons, 11 accused persons who are trainee sub inspectors and before this custody, training was



being imparted to them in Rajasthan Police Academy (RPA) and general diary/Rojnamcha at RPA was mandatorily maintained. **This is admitted fact that these 11 accused persons were taken in SOG custody from RPA on 2nd April 2024 at about 10:30AM and their official or formal arrests on papers were made from 3:30 p.m. to 5:30 p.m. on 3rd April 2024.** This court leans in the favour of this argument put forth from prosecution officer that custodial interrogation is an important and integral aspect of Investigation in order to unearth truth or to unfold the various layers of such complicated cases but the court is of this opinion also that this **custodial interrogation doesn't include any illegal custodial period.** Seriousness of offence is no ground for illegal detention or custody. Police or any other investigating agency like SOG has full authority to interrogate a person or to take time to verify the allegations or facts but there are some reasonable restrictions. Although police can summon and interrogate the person for so many times during the day times yet in the evening time suspect or witness has to be released from premises of such as agencies or police station and this course may continue for several days. Police or investigating agency has no power to detain such a person for continuous 30 hours before making an official arrest in law. There is no legal force in this argument of prosecution officer that it took longer time than usual to Interrogate the accused persons and to verify the facts. If this 30 hours period is reasonable period then this imagination can be stretched to very far reaching point where this 30 hours period may extend to 30 days or so on. So, this argument is not an argument at all. Police has no authority to detain a person for 30 hours on the name of interrogation. **One accused person Abhishek was taken in SOG custody on 31st March 2024 and his arrest was made on 3rd April 2024. He remained in SOG custody for almost 4 days without effectuating his arrest.** Article 22 has been meant for protecting such persons from illegal detention. Article 22 not only protects from arrest but also protects from detention. Even if the legal detention takes place then investigating agency is bound to bring such accused person before



the court within 24 hours. Having regards to the law of arrest laid down in various judgments and laws it is crystal clear that **in the case at hand, the detention took place on 2nd April 2024 and for Abhishek it took place on 31st March, 2024** on the same day of taking them in custody. As soon as they were taken to SOG custody, their free movement was restricted and the arrests were effectuated. If the facts had not been verified during the daytime of 2nd April 2024, these accused persons or suspects would have been released and they could have been called upon again for interrogation on next day. In this course the possibility of fleeing from justice might have existed but such possibilities don't make SOG entitled to break the laws and to confine the accused persons without arresting them. SOG had no clarification or justification of this detention. No law or precedent has been brought in the notice of this court which declares or approves such course of detention of 30 hours as lawful. The facilities at par, which a man enjoys at his posting place, doesn't make such detention legal because in such detention, a sense of fear always prevails and such fear, restriction and surveillance collectively constitute arrest and detention. These accused persons had got the status of accused or suspect while they were brought to SOG police station. Such detention has always possibility of inhumane custodial torture and to prevent and minimize such torture such safeguards in form of fundamental rights have been guaranteed under constitution. The legality of detention is decided on the basis of restriction which are imposed on liberty of individual rather than the facilities which are provided. A person who is unable to make his both ends meets can be sent to jail despite giving him delicious dishes. **If this issue is pondered over from a prudent person's perspective, if 30 hours long and continuous detention is not illegal detention, what else would amount to illegal detention?** Clearly the arrest of these accused was made in the evening of 2nd April 2024 and from that point of time, SOG had failed to bring these accused persons before the court within 24 hours and so their detention in custody amounts to illegal detention. **In the considered opinion of the court, all these 12 accused persons deserve an immediate**



release. The investigating officer and the monitoring team are responsible for this illegal detention and a letter be sent separately to home secretary and DGP Rajasthan for taking appropriate action against the erring officials so that the violation of fundamental rights can be prevented and in the future rule of law can be ensured.

12. **Conditional Release-** Again a question before this court is whether these accused persons to be released immediately conditionally or unconditionally. **Section 59 CrPC provides that no person who has been arrested by a police officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.** Accused persons can be released unconditionally but Court must be aware about the fact that the unconditional release will not amount to discharge the accused persons from the charges or allegations leveled against them and trial will definitely take place against them in case the charge sheet is filed. If there is absence of ingredients of offence or no offence is found to be made out, such accused persons can be released unconditionally because there will be no trial but wherever the possibility of trial exists, accused persons must be released on bail bonds. In Arnesh Kumar case it was laid down by Hon'ble Supreme Court that if illegal detention is found to be made out, the court will not authorise further detention in police or judicial custody and the court shall release the accused persons. **Keeping in view the above legal scenario, the accused persons are released conditionally on special bail bonds provided that each and every accused person furnishes the personal bond of one lakh rupees and two sound and solvent sureties for 50000 amount each. In case of failure, they be sent to judicial custody upto 26.04.2024 and JC warrant be prepared accordingly.**

So far as wrongful confinement is concerned, all accused persons are being represented through lawyers and therefore, the concerned accused persons or victims are free to take legal remedies available under laws. This court doesn't wish to express any opinion



upon two arguments as 1. this matter is totally political and 2. the accused persons are being targeted because of their association with particular caste or community. The court can deal only law points.

13. Why different order- Before parting with this application, one more important aspect is very pertinent to discuss here that earlier this court in an application of such same nature ordered for the enquiry under supervision of DGP Rajasthan but in this application why this different order is being passed? The answer lies in the series of events that followed in this case. It is required to be mentioned here that this case was registered on 3rd March 2024 and 14 accused persons were taken in custody on the very next day. At that time the case was at very nascent stage and during the first time it was very natural and obvious to take time to verify the facts and allegations. The confessional statements obtained from other accused persons in other cases were the base of the FIR and SOG did not have sufficient collection of facts till then. Those were the first arrests in this case. The court exercised judicial restraint and hesitated to hold the detention totally illegal because that might have been the first Bona fide act on the part of SOG but this time, the investigation is not in nascent stage. In the earlier application, this court did not dismiss the application. The view of the court was almost same but the ultimate conclusion was not drawn and a fact finding full fledged enquiry was ordered but it is not necessary for the same court to perpetuate the same course of action time and again. When SOG adopted the same course of action and did not honour the law laid down in the constitution and in the judgments of Hon'ble Supreme Court and High Courts then this court has taken this opportunity to adjudicate at its own level. One more thing is necessary to add here that in first order, this court held that SOG must have produced the accused persons within the time prescribed in the law so that such unwanted controversy could have been nipped in the bud but SOG didn't care about this direction and opinion of this court. It shows that SOG has no fear about the enquiry being conducted. In such an exceptional situation of continuous violation of fundamental rights, this court



doesn't deem it fit to instruct one more enquiry. At some stage, the court has to enquire into the facts and to draw the conclusion. No court is bound to follow its own earlier opinion. The court may draw different opinion or conclusion on different levels of the same case or in the different cases. If one thing or way doesn't work properly, the court has to adopt the different things or ways. Sometimes the judicial propriety and demands of justice call for different actions. The perceptions and conclusions of the court are bound to be changed with the passage of time, however short it may be. One time judicial restraint or hesitation is not a stamp or licence for SOG to continue the breach of fundamental rights. This order may look like philosophical, but it's philosophical because the fundamental rights and basic values and principles of laws are based on different philosophies. In this case, the court has adopted the same approach but different course of action which is quietly permissible under the law. This court can only feel for the earlier hesitation for not drawing final conclusion and now the order for release of already imprisoned persons can not be passed because technically it will amount to judicial review which is not allowed in criminal law.

14. Ultimately this application is disposed of accordingly.

Chief Metropolitan Magistrate,
Jaipur Metropolitan-II