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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION (ST) NO. 13292 OF 2024

Bhavesh P. Bhinde .. Petitioner
Versus
The State of Maharashtra .. Respondent

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Mr.Rizwan Merchant a/w Mohammed Zain Khan, Gaurav Sinha, Ashraf Kapoor, Khyati Daga and S. Patel i/b Gaurav Sinha for the Petitioner.

Mr.H.S. Venegavkar, PP a/w Ms.M.M. Deshmukh, APP for the State.

PSI Atmaji Sawant, DCB CID, Unit 7 present.

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATED : 09th AUGUST, 2024

JUDGMENT (PER BHARATI DANGRE, J.):

1. On 13/05/2024, a thunderstorm hit the city of Mumbai which witnessed heavy rain fall.

To add to the calamity and woes faced by the residents of Mumbai city, a hoarding structure admeasuring 64 x 50 mtrs, with the height of about 120 ft, got uprooted and the huge metal structure of the hoarding came crushing on Santa Colony Petrol Pump, at about 4.23 p.m., resulting in a catastrophic situation.

The Petrol pump operator, Mr.Manoj Patil, immediately, made a phone call to Pant Nagar Police Station, as several vehicles including two wheelers and four wheelers, present at

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the petrol pump for filling of gas crushed beneath the metal structure.

The occurrence caused lot of commotion and injured people who were trapped in the vehicles underneath, were rescued to the extent possible, and were sent to Rajawadi Hospital for medical treatment.

By deploying additional force to rescue the people trapped, the operation was called off after 60 hours of the incident.

This calamitous situation took 16 lives, and 64 people were critically injured and several vehicles were severely damaged.

2. The above incident resulted in registration of FIR at Pant Nagar Police Station at the instance of Assistant Police Inspector attached to the Police Station, which invoked Sections 304, 337, 338, 427 read with 34 of the Indian Penal Code.

During the investigation, it was revealed that the hoarding was erected by Ego Media Pvt. Ltd. and the same was done without obtaining requisite permissions from the Municipal Corporation of Greater Mumbai (MCGM), nor it was subjected to any structural audit.

The Director/Owner of this Company was named as 'Mr. Bhavesh Bhinde' and the investigation revealed that the Company was incorporated on 05/09/2016 and was engaged in the business of outdoor advertising in Mumbai city.

Pursuant to a tender floated for granting advertisement rights adjoining the Eastern Express Highway, Mumbai, the

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hoarding was erected, upon the allotment letter being issued in favour Ego Media Pvt. Ltd. on 22/11/2022, which permitted the display of advertisement on the hoarding, to be erected on an area of 33,800 sq. ft., for a period of 10 years on payment of rent.

3. On registration of the FIR and on collecting preliminary information about the owner of the billboard, which had collapsed, taking life of 16 people and injuring many, DCB CID, Unit 7, Ghatkopar, made a frantic search for it's owner.

Distinct teams were constituted for his search, and they were deputed to Lonavala and Ahmedabad, on some clue being received, but he could not be traced.

Ultimately when tipped off about his presence in Udaipur, one of the team tracked him to a private hotel in Udaipur, Rajasthan on 16/05/2024, and since he was arraigned as an accused in CR No.353/2024, he was brought to Mumbai for the purpose of interrogation and upon establishing his involvement in the offence, by exercising power under Section 41 of the Code of Criminal Procedure, 1973, he came to be arrested by adopting the prescribed procedure, on 17/05/2024 and was also produced before the Jurisdictional Magistrate on the same day.

The arrested person is the Petitioner before us, who has been subjected to Police Custody of 14 days by three different Remand Orders and, thereafter he was transferred to judicial custody and as on date, he continue to be in judicial custody.

4. The present Petition is filed by the petitioner praying for the following reliefs :-

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“b] This Hon’ble Court be pleased to quash, set aside the orders dated 17th May 2024, 26th May 2024, 29th May 2024 and 30th May 2024 passed by the 8th and 37th Addl. Chief Metropolitan Magistrate Court, Esplanade Mumbai, thereby granting police custody of the Petitioner to the Respondent and thereafter Judicial Custody under C.R. No.353 of 2024 dated 13th May 2024 for alleged offences u/s 304,337, 338, 427 & 34 of I.P.C. originally registered with Pant Nagar Police Station, Mumbai and transferred to the DCB CID Unit VII under C.R. No.47 of 2024.

c) This Hon’ble Court in pursuance of prayer clause (b), be pleased to declare that the arrest and detention of the Petitioner under C.R.No. 353 of 2024 dated 13th May 2024 for alleged offences u/s 304, 337, 338, 427 & 34 of I.P.C. originally registered with Pant Nagar Police Station, Mumbai and thereafter transferred to the DCB CID UNIT VII under CR NO. 47 of 2024, is illegal, unlawful, bad in law and accordingly release the Petitioner on bail on such terms as may be deemed fit and proper by this Hon’ble Court.”

5. We have heard the learned counsel Mr.Rizwan Merchant for the Petitioner in support of the reliefs prayed in the petition, who is opposed by Mr. Hiten Venegavkar, the learned Public Prosecutor.

By consent of the parties, we issue ‘Rule’ and by consent of the respective counsel, Petition is heard finally.

The Petition which was originally filed, is amended with our approval, wherein additional grounds have been added by pleading that the Petitioner was arrested on 16/05/2024 from Udaipur, Rajasthan, at around 7.20 p.m. and the fact of his arrest is manifest and evident from various newspaper articles published in Newspapers/Online articles on 16/05/2024.

In addition, it is also pleaded that the Arrest Memo was not produced at the time of first remand on 17/05/2024 inspite of the Advocate seeking a copy of the same, but the Arrest

Memo has been produced by the Respondent for the first time along with the Affidavit in Reply filed, opposing the Petition.

The prime ground in the Petition, is that the arrest of the Petitioner is not in compliance with the law laid down by the Apex Court in the case of *D.K. Basu Vs. State of West Bengal*,¹ .

6. Mr.Merchant representing the Petitioner has strenuously urged before us that the arrest of the Petitioner is on 16/05/2024 from Udaipur, Rajasthan and the contention of the respondent that he was arrested on 17/05/2024, is a false claim.

Mr.Merchant has relied upon several Newspaper Articles and Media Reports, reflecting that the Petitioner, Director of Ego Media Pvt. Ltd. was arrested on 16/05/2024 and, therefore, if the stand of the respondent is to be accepted that he was arrested on 17/05/2024, then his custody from 16/05/2024 to 17/05/2024 with the respondent is illegal.

In addition, it is his submission that the grounds of his arrest are not communicated to him, and he was never furnished the copy of the Arrest Memo.

Mr.Merchant, by inviting our attention to the first remand order, dated 17/05/2024, would submit that though the Remand Application indicate that there is compliance of the directives issued by the Hon'ble Apex Court and information of his arrest was given to his wife Jigna Bhavesh Bhinde, in absence of the communication of grounds of arrest in writing as held by the Apex Court in case of *Pankaj Bansal vs. Union of India & Ors.*² and in case of *Prabir Purkayastha*

¹ (1997) 1 SCC 416

² 2023 Live Law (SC) 844

vs. State (NCT of Delhi) dated 15/05/2024 and decision of this Court in the case of **Mahesh Pandurang Naik vs. State of Maharashtra & Ors.**(WP St No.13835/2024), the arrest is illegal.

7. Mr.Venegavkar, the learned Public Prosecutor by placing reliance upon the affidavit filed by the Police Inspector, DCB, CID, Unit 7, Ghatkopar, affirmed on 24/7/2014 has repelled the submission of Mr. Merchant, by submitting that the grounds raised in the Petition are frivolous and the record would reveal that the arrest of the Petitioner has been made after following due process of law.

He would specifically submit that there is sufficient compliance of Section 41 and also Section 50 of the Code of Criminal Procedure, as at time of his arrest, the Petitioner has been informed of the grounds of his arrest and even his wife was intimated about his arrest.

Mr.Venegavkar has specifically relied upon the following averment in the affidavit in reply;

“It is a matter of record that the arrest of the petitioner has been informed to him as well as his wife and the arrest memo categorically mentioning grounds of his arrest has been informed to him in writing as well as the copy of the same has been provided, of which he has acknowledged. A specific entry of this has been noted by the Investigating Officer in the case diary dated 17/5/2024. The communication of the same made to his wife is also noted in the station diary on the same date. A separate copy of the grounds of arrest under Section 41B of Cr.P.C has been provided to the Jurisdictional Magistrate at the time of his production. The guidelines of D.K Basu was followed while arresting the petitioner.”

8. In response to the additional grounds raised by amending the Petition, reliance is placed upon an additional

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affidavit filed on 2/8/2024, where a clarification is offered that the Petitioner was not arrested on 16/5/2024, but he was apprehended by the team from Udaipur, Rajasthan, where he was hiding in a private hotel, where the room was booked under a different name and his identity was completely changed, so that he is not tracked.

According to Mr.Venegavkar, he was brought to Mumbai, where his arrest was effected at 12.40 p.m. on 17/5/2024, when the written arrest memo was served upon him, which included the grounds of his arrest.

9. In addition, the Public Prosecutor has specifically submitted before us that the entire case file of the investigation was produced during remand before the Magistrate who, on its perusal, recorded his satisfaction that the arrest was made as per law, and therefore, granted Police Custody Remand (PCR) for the purpose of investigation.

10. We have heard the rival contentions advanced before us for consideration of the relief prayed in the petition.

The question that arises before us is two-fold; the first being, whether the Petitioner was arrested on 16/5/2024 or on 17/5/2024 and secondly, whether at the time of his arrest, the procedure as prescribed by law was followed.

11. In colloquial terms, 'Arrest' is an act of apprehending and taking a person into legal custody, usually because the person has been suspected of committing crime.

As per Cambridge Law Dictionary, the term 'Arrest' is understood as 'to stop or interrupt development of something'.

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As per Collin's Law Dictionary, 'Arrest' is an act of taking person into custody, especially under lawful authority.

Since 'Arrest' involve serious consequences and result into deprivation of liberty of a person, which in the wake of Article 21 of the Constitution, is one of the prominent fundamental right available to a person, of which he can be deprived of only in accordance with the procedure established by law.

Article 22 of the Constitution of India, has also set out specific stipulations according protection against arrest and detention, in certain cases and sub-clause (1) thereof, clearly prescribe that no person who is arrested, shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

As an additional safeguard, sub-clause (2) has also made it imperative to produce the person who is arrested and detained in custody before the nearest Magistrate before 24 hours of such arrest.

12. In tune with the safeguard provided against arrest in the Constitution, Chapter V of the Code has specifically outlined provisions from Section 41 to Section 60-A, regarding 'Arrest', including the manner in which a person is to be arrested.

Section 60A of the Code prescribe that no arrest shall be made, except in accordance with the provisions of the Criminal Procedure Code, 1973, or any other law, for the time being in force, providing for arrest.

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Section 46 specifically provide that in making an arrest, the Police Officer or other person making the same, shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Translating the constitutional right under Article 22 enshrined under the Constitution of India in Section 50 in the Code, contemplate providing information of the grounds of arrest and right of bail to a person arrested and every Police Officer or every other person arrested, without warrant, is duty bound to communicate to the arrestee the full particulars of the offence, for which he is arrested or other grounds of his arrest.

13. The term 'Arrest' used in the Code with a specific meaning assigned to it differs from the word 'in custody', which also is used in the Code as well as the Evidence Act, 1872, which denote surveillance or restriction on the movement of a person concerned, which may be complete, as for instance, in the case of an arrested person or may be partial. The concept of being in custody cannot be equated with the concept of formal arrest.

Much jurisprudence has been evolved in distinguishing the two terms specifically in reference to Section 439, a provision for grant of bail, which is permitted to be availed, when a person is in custody.

The Apex Court in *Niranjan Singh & Anr. vs. PrabhakarRajaram Kharote & Ors.*³ ascribed the meaning to the term 'in custody', while considering the fulfillment of the condition which entitle the Applicant to seek bail.

³ AIR 1980 SC 785

Definitely merely taking a person into a custody by an authority empowered to arrest, or mere presence of the accused is not enough to constitute his arrest unless the procedure prescribed is followed, as it is well accepted principle in law, laid down in ***Nazir Ahmed Vs. King Emperor***⁴, where the Judicial Committee has ruled that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

Therefore, in order to effect an arrest, it must be in conformity with the procedure prescribed in law and in this case, definitely the one prescribed in Chapter V 'Arrest of Person' in the Code of Criminal Procedure, 1973.

Failure to comply with requisite procedure would be fatal to the legality of the execution of any act or of the passing of any order even though by a person, authorised in law. Procedural safeguards which have been identified as an essence of liberty necessarily vitiate an action, taken in violation of the provisions, though procedural in nature.

14. In light of the aforesaid enforceable provisions, we would examine the first question before us as to whether the Petitioner was arrested on 16/5/2024 at Udaipur, as Mr. Merchant has attempted to canvass before us that on registration of the FIR, he was shown as 'wanted accused' and he was tracked by the Investigating team in Udaipur and media report has reflected that he came to be arrested on 16/5/2024.

⁴ AIR 1936 PC 253(2)

For this purpose, he has placed reliance upon the newspaper report with headlines **‘HOARDING COLLAPSE: Bhavesh Bhide arrested at Udaipur by Mumbai Police’**.

There can be no reliance on the newspaper report and when we specifically asked Mr. Merchant if the Investigating Officer or any Officer of the Police Department had given any press release or statement, as regards his arrest from Udaipur, his answer is in the negative.

In any case newspaper reports by themselves are not evidence of the contents thereof and are based only on hearsay evidence and the presumption of genuineness attached to it under Section 81 of the Evidence Act, 1872 cannot be treated as proof of the facts reported therein.

15. In contrast, from the documents placed before us including the arrest memo, arrest panchnama, station diary and the case diary, it is clear to us, that the Petitioner was tracked by the investigating team in Udaipur, where he had concealed himself in a disguise, as he was residing under different identity as the room was booked in the name of Bhavin Pujara.

On being traced, the station diary entry record, that for the purpose of investigation, and for establishing his identity, he expressed his willingness to accompany the investigating team to Mumbai.

The information was immediately transmitted to his relative and considering the gravity of the situation and to avoid any issue of law and order, he was brought from Udaipur to Ahmedabad by road and later on, flown to Mumbai for the purpose of interrogation.

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On being apprehended, he was presented in the office of DCB CID, Unit 7, Ghatkopar, and when the interrogation revealed that he had an active role to play in the subject crime, in presence of two panchas, he was searched and the arrest panchnama was executed. The various mobile phones along with the sim cards, which were found during his search, were also seized.

The information about his arrest was given to his wife Jigna Bhinde and the Petitioner was subjected to medical examination and, thereafter, he was produced before the Magistrate for remand.

16. We have perused the compilation of documents produced before us by Mr. Venegavkar, which include the documents which have been annexed along with the affidavit.

The arrest memo dated 17/5/2024 bear the signature of the Petitioner on the left side and this signature is not disputed by Mr. Merchant. The arrest memo record that in connection with C.R.No. 353/2024, the accused is being arrested and five grounds of arrest are clearly set out in the arrest memo.

Another relevant document is the Arrest/Court Surrender Form, which has recorded the time of arrest as '12.40 p.m" on 17/5/2024 and in the proforma, the relevant details are filled in, which include the identification mark as regards the arrested person.

Column no.13 of the Arrest Form bear the signature of two witnesses and column no.14 is the signature and left hand thumb impression of the arrested person.

The accompanying panchnama under the signature of two panchas, record that on receiving information, that the

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accused in C.R.No. 47/2024 is to be arrested and the panchnama is to be executed, they presented themselves in Crime Branch, Ghatkopar, Mumbai. The panchnama has recorded the procedure carried out while taking the search of the accused person by the two panchas, and it refer to the mobile numbers and several sim cards recovered during his search, which were seized under the signature of panchas.

The panchnama is signed by the panchas, and it also has the signature of the arrested accused.

A checklist prepared by the Police Inspector and forwarded to the Magistrate on 17/5/2024, with reference to Section 41-B of Cr.P.C, informing about the arrest of the accused, is also included in the compilation.

17. It is the specific contention of Mr.Venegavkar that all the aforesaid documents were placed before the learned Magistrate at the time of production of the Accused on 17/5/2024 and at Exhibit-D, the report of the Police Inspector, Unit-7, Crime Branch, Ghatkopar, Mumbai is annexed, which include the reasons for police custody remand.

The order passed by the Magistrate on the Remand Application (Exhibit Q to the Petition) record thus:-

"6 I carefully examined all these aspects. I have gone through the case diary, arrest memo, arrest panchnama and entire documents as well as precedents submitted by Ld. Defence Counsel for accused. According to Defence Counsel, arrest is not justified as grounds of arrest were not informed to accused either orally or in writing and that such action is in gross violation of the constitutional mandate under Article 22(1) of the Constitution of India and Section 50 of the Code of Criminal Procedure, 1973. After perusing the entire record, it reveals that Investigating Officer filed arrest memo in which the ground of arrest were specifically mentioned and it was duly signed by the accused. Hence, it is not

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palatable to say that grounds of arrest were not communicated to this accused. Hence, precedent of Hon'ble Supreme Court in D.No. 4289/2023 Prabir Purkayastha Vs. State (NCT of Delhi) delivered on 15th Mat 2024 is not squarely applicable to the matter in hand. Moreover, not only reasons of arrest conveyed to accused only but also it was informed to his wife Jigna Bhavesh Bhinde about his arrest.

7.

8 *Offence is really serious in nature. It is against humanity. Innocent people were died due to collapsed of illegally gigantic hoarding, 16 peoples are already died, even other peoples are hospitalized and admitted in hospital and after this incident being a responsible person accused fled away and was arrested at Udaipur, Rajasthan. If accused is not responsible for above mentioned act, then why he fled away from Mumbai after this incident. Presence of accused definitely facilitated to investigation."*

18. Though Mr. Rizwan Merchant has urged before us that the copy of the Arrest Memo was not furnished to him by the Magistrate, Mr. Venegavkar, has produced before us the certified copies of the documents, which were obtained from the Magistrate, on an application being made by the Respondents and this includes the Arrest Memo as well as arrest panchnama and since we cannot find any justification as to why this copy was not given to the accused, we are unable to accept this submission.

In any case, the Magistrate, while granting Police Custody Remand, has clearly recorded that the case diary, arrest memo, arrest panchnama were produced before him and he had perused the same and concluded that the grounds of arrest were specifically mentioned in the arrest memo, which was duly signed by the accused and therefore, it is not palatable to say that grounds of arrest were not communicated to the accused.

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It is true that transparency of action and accountability, are the two safeguards against abuse of police power and by juxtaposing this against the constitutional and statutory safeguards, the Apex Court in case of ***D.K. Basu*** (supra) had issued directions governing all enforcement agencies and expected its strict compliance, with a stern warning that non-compliance thereof shall render the concern official liable for departmental action as well as the contempt of Court.

These guidelines clearly contemplate that the police officer carrying out the arrest shall prepare memo of arrest at the time of his arrest and such memo shall be attested by at least one witness, who may be either member of the family or respectable person of the locality, where arrest is made, and it shall be countersigned by the arrestee, and shall contain time and date of arrest. Forwarding the copies of the documents, including the memo of arrest to be sent to the Magistrate for his record, further ensure its accountability, along with a requirement that the person arrested must be made aware of his right to have someone informed about his arrest as soon, as he is put under arrest.

19. The necessary guidelines, stemming from Article 21 and 22(1) of the Constitution necessarily bound the law enforcement agencies to adhere to the safeguards provided, and though it emanated from the valuable fundamental right conferred upon a citizen of this country to make it more meaningful, the Code of Criminal Procedure is amended and the guidelines had found its way in the Code itself, in form of Section 50 and Section 50-A.

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The attempt by Mr. Merchant to describe the arrest of the Petitioner, being illegal has failed to impress us, as we have noticed that the arrest of the Petitioner is in strict compliance of the constitutional safeguards as well as the provision contained in the Code of Criminal Procedure, 1973. Similarly, we also do not find any infraction of his right enshrined in Article 22(1) and (2) of the Constitution.

Recording that the respondent authorities have followed the mandate of law and even the one which has been laid down by the Apex Court in case of ***Pankaj Bansal*** (supra) and the subsequent decision in case of ***Prabir Purkayastha*** (supra), we find no reason to interfere with action of the Respondents.

20. Finding no legal infirmity in effecting the arrest of the Petitioner in connection with a serious offence registered against him, the grounds raised for claiming his arrest to be illegal, according to us, is nothing, but a faux and ersatz call, as we have noticed that the procedural safeguards which are indispensable and received recognition through the Constitution, which has considered liberty of a citizen to be of a paramount importance, is not impaired in any manner.

Finding no merit in the submission advanced on behalf of the Petitioner, the Writ Petition is dismissed. The Rule is discharged.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)

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