



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL WRIT PETITION ST NO. 17757 OF 2024

Hem Prabhakar Shah .. Petitioner  
Versus  
The State of Maharashtra .. Respondent  
WITH  
INTERIM APPLICATION ST NO. 18654 OF 2024  
IN  
CRIMINAL WRIT PETITION ST NO. 17757 OF 2024

M/s.A.P. Trading .. Applicant  
In the matter between  
Hem Prabhakar Shah .. Petitioner  
Versus  
The State of Maharashtra .. Respondent  
through Azad Maidan Police Station

...  
Mr. Aabad Ponda, Senior Advocate with Mr.Kushal Mor, Manavendra Mishra, Akhilesh Singh, Adithi Rao, Marmik Shah, Tanmay K. i/b Khaitan & Co. for the petitioner.  
Mr. J.P. Yagnik, APP for the State.

CORAM: BHARATI DANGRE &  
MANJUSHA DESHPANDE,JJ.  
DATED : 5<sup>th</sup> SEPTEMBER, 2024

JUDGMENT:- (Per Bharati Dangre, J)

1           The present Writ Petition is filed by Shri Hem Prabhakar Shah, praying for issuance of writ of Habeas Corpus or writ, any other order or direction, seeking his release forthwith, as according to the petitioner, he has been illegally detained.

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The petitioner has also sought directions for quashing and setting aside of the Remand Orders dated 15/8/2024 and 17/8/2024, his arrest being not in accordance with law.

2 We have heard learned senior counsel Mr.Aabad Ponda for the petitioner and Mr.J.P. Yagnik, learned APP for the State. We have also heard Mr.Karan Kadam along with Mr.Ishwar Nankani, appearing for the intervenor/complainant.

On hearing them, we have issue Rule and by consent of the parties, by making the rule returnable forthwith, we have finally heard the writ petition.

3 The background facts leading to the arrest of the petitioner, as set out in the petition disclose the following events:-

(A) The petitioner was flying to India (Ahmedabad, Gujarat) from Singapore on 13/8/2024. Upon landing in Ahmedabad, he was intercepted detained by the Immigration officers around 10.00 p.m, allegedly based on a Look Out Circular ("LOC") issued at insistence of the respondent no.1.

(B) Without giving any further information, he was transferred to the custody of Sardar Vallabhbhai Patel International Airport police station.

(C) From 10.00 p.m on 13/8/2024 till 1.00 p.m, on 14/8/2024, the petitioner was detained in the police lock-up at Airport police station at Ahmedabad.

(D) The officer of respondent no.1 arrived in Ahmedabad at about 3.00 p.m and the petitioner was brought to Mumbai by Air.

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(E) The petitioner was shown to be arrested at 23.08 p.m on 14/8/2024 by Azad Maidan police station.

(F) On 15/8/2024, at around 12.30 p.m, the petitioner was produced before the Vacation Court i.e. 37<sup>th</sup> Metropolitan Magistrate and the respondent sought remand of five days.

(G) The Magistrate authorized remand of the petitioner to two days police custody, till 17/8/2024.

(H) On the request of the Azad Maidan police station, the remand was granted until 21/8/2024.

4 Mr.Ponda, the counsel representing the petitioner is extremely critical about the process that is adopted by the respondent, as according to him, on 13/8/2024, in furtherance of a Look Out notice, when the petitioner arrived at Sardar Vallabhbhaai Patel International Airport, he was stopped by Immigration Officer, in the backdrop of the LOC issued against him and his custody was handed over to the Airport Police Station at SVP Airport, where he was detained overnight.

By confining him in lock-up, it was only on 14/8/2024, at 12.30 p.m, the personnel from Azad Nagar police station arrived and his custody was transferred to him and thereafter, by flight, he was brought to Mumbai on 14/8/2024 at 7.00 p.m. After bringing him to Azad Maidan police station, he was shown to be arrested at 11.05 p.m on 14/8/2024.

Mr.Ponda has invited our attention to Section 57 of the Code of Criminal Procedure and relying upon the decision of the

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Apex Court in *Manoj Vs. State of Madhya Pradesh*<sup>1</sup>, he has urged before us that it is a constitutional mandate, that no person shall be deprived of his liberty, except in accordance with the procedure established by law and close to its heels, is a provision contained in the Code of Criminal Procedure, that a person arrested and detained in custody, must be produced before the nearest Magistrate within 24 hours of arrest and the only period which is permitted to be excluded is the time necessary for going from the place of arrest to the Court of the Magistrate, and according to him, these directions can be obviated only when the person arrested is an 'enemy alien' or when the arrest is under any law for preventive detention.

By not producing the petitioner before the nearest Magistrate within 24 hours of his arrest, according to Mr.Ponda, his right guaranteed under Article 22(2) of the Constitution, is violated.

5 In addition, he would also urge before us that the arrest is illegal since the grounds of arrest are not communicated to him, which is a mandate as prescribed in Article 22(1) of the Constitution along with the corresponding provision in form of Section 50 of the Cr.P.C, which make it imperative for every police officer or any person exercising the power of arrest, without warrant to forthwith communicate the full particulars of the offence for which he is arrested or other grounds of arrest.

Reliance is placed upon the decision of the Apex Court in *Pankaj Bansal vs. Union of India & Ors*<sup>2</sup> and *Prabir Purkayastha*

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1 (1999) 3 SCC 715

2 2023 SCC Online SC 1244

**vs. State (NCT of Delhi)<sup>3</sup>** as well as the decision of this Court in case of ***Mahesh Pandurang Naik Vs. State of Maharashtra***.

Relying upon the aforesaid pronouncements, it is the argument of Mr.Ponda that any arrest coming into effect from 3/10/2023 must ensure compliance by indicating the ground(s) of arrest in writing expeditiously.

6 In addition, the learned senior counsel has also pressed before us another important facet in the present case, being that the offence registered against the petitioner is under Section 420 r/w Section 34 IPC, both offences being cognizable and punishable upto maximum of 7 years of imprisonment.

7 It is submitted that the FIR is being registered almost four years back and the respondent had not taken efforts to contact the petitioner who was declared absconding and resulted into issuance of LOC, but according to the petitioner, he is a resident of Singapore and was not in fact even aware that such an FIR has been registered against him.

He would emphasize upon the procedure laid down in the Code for serving summons to the non-residents via Mutual Legal Assistance Treaty(“MLAT”). It is also urged that no efforts were taken by the respondent to serve any summons/notice as provided under Section 41-A of Cr.P.C, since the offence was punishable with Imprisonment below 7 years and the Apex Court in case of ***Arnesh Kumar Vs. State of Bihar*<sup>4</sup>** has clearly dispelled the assertion that on registration of any cognizable offence, arrest is mandatory.

<sup>3</sup> 2024 SCC Online SC 934

<sup>4</sup> (2014) 8 SCC 273

While striking a balance between individual liberty and the societal order while exercising the power of arrest, directions were issued by the Apex Court to be made applicable to the offences which are punishable with Imprisonment for a term which may be less than 7 years, or which may extend to 7 years and it is specifically provided that police officer shall not arrest the accused unnecessarily and the Magistrate shall not authorise the detention casually and mechanically. In no uncertain words, according to the learned counsel, the Apex Court has issued directions to be followed and instead of arrest, a notice of appearance in terms of Section 41-A of Cr.P.C, to be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for reasons to be recorded in writing.

Reliance is also placed on the decision in case of ***Satendra Kumar Antil Vs. CBI & Anr***<sup>5</sup> which has re-iterated the guidelines laid down in ***Arnesh Kumar Vs. State of Bihar*** by holding that the courts would come down heavily on the Officers effecting arrest without due compliance of Section 41 and Section 41-A and the discretion to be exercised by the Investigating Agency while effecting an arrest, shall be exercised on the touchstone of presumption of innocence and the safeguards provided under Section 41, since arrest in every case is not mandatory.

8 In order to assign true meaning to the term ‘custody’, Mr.Ponda has relied upon the decision in case of ***Niranjan Singh & Anr. vs Prabhakar Rajaram Kharote & Ors,***<sup>6</sup> and also upon the

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5 (2021) 10 SCC 773

6 (1980) 2 SCC 559

decision of the Apex Court in *State of Haryana & ors Vs. Dinesh Kumar*,<sup>7</sup>. Emphasizing upon the test of 'arrest', being whether a person is under control of the Investigating Agency or the Court, or whether he is free man to walk out of the Court, at his free will, by relying upon Niranjana Singh (supra), the persons/authorities competent to arrest, being either the Investigating Agency or other police, or allied authority, or when he is under the control of the Court, he has urged that the term 'arrest' necessarily convey a restrain on a person's movement, and when he is under such a restrain, resulting into deprivation of his personal liberty, it cannot be argued that there is no arrest.

9 We have heard, the Additional Public Prosecutor Mr. J.P. Yagnik, for the State, who had denied infraction of any right of the petitioner and by emphasizing upon the gravity of the offence, he would submit that petitioner is accused of a serious offence registered in the year 2019, and since he was not traced, the case was classified as 'A' summary and a Lookout notice was issued. When he was spotted at Ahmedabad Airport, he was apprehended and his identity was established and to prevent him from escaping the clutches of lock, he was required to detained, which according to him cannot amount to his arrest as there is a vast difference between 'Arrest' and 'Custody'.

10 In *Arnesha Kumar vs. State of Bihar*, (supra) while pronouncing upon the effect of arrest, the Apex Court observed as below:-

*"5. Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a*

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<sup>7</sup> (2008) 3 SCC 222

*battle between the lawmakers and the police and it seems that the police has not learnt its lesson:the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.”*

11 Article 21 of the Constitution clearly mandate that no person shall be deprived of his life and liberty except in accordance in law.

The universal declaration of human rights, which is reflected through the aforesaid provision in the Indian Constitution, provide for somehow similar facet, by prescribing ‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’.

The procedure to be complied with, while depriving a person of his liberty, is set out in the Code of Criminal Procedure, 1973, and chapter V with the caption ‘Arrest of Persons’ prescribe as to when a police officer may without an order from the Magistrate and without the warrant arrest the person, who has committed a cognizable offence.

Sub-clause (b) of sub-section (1) of Section 41 authorize the police officer to effect an arrest of a person against whom reasonable complaint has been made or credible information is

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received, or a reasonable suspicion exist that he has committed a cognizable offence punishable with imprisonment for a term which may be less than 7 years or which may extent to 7 years, whether with or without fine, if he is satisfied about the existence of the conditions prescribed and he is satisfied that there are reasons to believe that he has committed the offence.

If the police officer is satisfied that arrest is necessary for any of the reasons prescribed in Section 41(1)(b), he shall record his reasons in writing, while making such arrest.

12           Section 41-A, which is introduced by Act No.5 of 2009 with effect from 1/11/2010, has carved out the procedure to be followed, where the arrest of a person is not required, then the police officer shall issue a notice directing the person to appear before him at or such place as he may specify and such person shall be duty bound to comply with the terms of the notice. So long as the person comply and continue to comply with the notice, he shall not be arrested unless the police officer is of the opinion that his arrest is necessary, he will do so after recording reasons to that effect. However, when a person fail to comply with the terms of the notice, or is unwilling to identify him, the police officer may arrest him for the offence mentioned in the notice.

13           The Code of Criminal Procedure also prescribe the manner in which arrest shall be made in Section 46, by adumbrating that in making an arrest, the police officer or the 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.

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Though there is no definition of the term ‘Arrest’ in the Code of Criminal Procedure, the term ‘Arrest’ having long engaged in the attention of various High Courts and Supreme Court in colloquial sense is understood as an act of taking a person into custody or otherwise depriving him of his freedom of action.

‘Arrest’ connotes apprehension of a person by a lawful authority, so as to cause deprivation of liberty. In reference to an offence, an arrest is an act of apprehending and bringing a person into custody, because the individual is suspected of or is found to have indulged himself in committing a crime.

The manner in which the arrest is to be effected is set out in Section 46 of the Code and a person can be arrested in a manner prescribed in sub-section (1) but there can also be arrest by submitting to custody by words or action.

Section 44 of the Code is a provision for an arrest made by a Magistrate, who is empowered to arrest a person, who has committed an offence in his presence and to commit him to custody whereas sub-section (2) of Section 44 empowers a Magistrate to arrest a person suspected of having committed an offence, but he shall not exercise the power to commit him to custody.

14 In order to safeguard the most cherished principle of ‘Liberty of a citizen’, the Constitution itself has made certain provisions conferring rights upon the person to be arrested, which include the rights to be informed about the grounds of his arrest and his right to consult and to be defended by a legal practitioner of his choice.

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Sub-clause (2) of Article 22, make it mandatory to produce every person who is arrested and detained in custody before the nearest Magistrate, within period of 24 hours of such arrest excluding the time of journey and no such person shall be detained in custody beyond the said period without the authority of the Magistrate.

The said provision finds translated in Section 57 of the Code of Criminal Procedure, 1973 and has been held to be mandatory in nature.

15 In *Niranjan Singh* (supra), the issue arose as to what did the term 'in custody' convey, as in reference to Section 439 of the Code, a High Court or Court of Sessions was empowered to release on bail any person accused of an offence and in custody.

When the respondents who were accused of offences but were not in custody, it was urged that the basic condition of being in jail is not fulfilled. The Court postulated a situation, where the accused were not absconding, but appeared and surrendered before the Sessions Judge and whether he can be said to be in custody.

Assigning a meaning to the term 'custody' in the context of Section 439, Justice Krishna Iyer, concluded it to be physical control or at least physical presence of the accused in court coupled with submission of the jurisdiction and the orders of the court.

While answering a question as to when a person is in custody within the meaning of Section 439 of the Code, it was answered by stating that, when he is in duress, either because he is held by the investigating agency or other police or allied authority or is

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under the control of the Court having been remanded by the judicial order, or having offered himself to the court jurisdiction and has submitted to its orders by physical presence.

In his inimitable style, Justice Krishna Iyer, paraphrased the term as below-

*“No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.”*

16 While the word ‘Arrest’ as distinguished from ‘Custody’ received further expansion in Dinesh Kumar (Supra), when the appeals placed before the Apex Court raised a seminal question as to what constitutes ‘Arrest’ and ‘Custody’, in relation to criminal proceedings.

In first of the two appeals, the respondent did not surrender, but appeared before the Magistrate with his lawyer and was granted bail and it was urged that he was not taken into custody or arrested at any point of time.

In the other set of appeals, the appellants answered the query in column (14), ‘Have you ever being convicted by court of any offence’ in the application forms for appointment as Constable-

Drivers in Haryana Police, since they have been acquitted of the charges and in column 13(A), as to whether they have been ever arrested, it was disclosed that they appeared before the Magistrate and they are released on personal bond without being arrested or taken into custody.

By referring to Section 46, when it was urged before the Court that ‘arrest’ is to legally restrain a persons movement, or it is detention of a person in custody by authority of law, while opposing the arguments reliance was placed upon the full bench decision of Madras High Court, in case of *Roshan Beevi vs. Joint Secretary to the Government of Tamil Nadu (1984) Criminal Law Journal, 134 (Mad)*, which had held that ‘Custody’ and ‘Arrest’ are not synonymous and it is true that in every arrest there is a custody, but not *vice a versa* and a custody may amount to ‘arrest’ in certain cases, but not in all cases. The decision in Niranjana Singh was distinguished by the Full Bench, when it concluded that mere taking of a person in custody would amount to arrest.

17 Expressing that the Apex Court was unable to appreciate the views of the full bench of Madras High Court, and reiterating the decision in Niranjana Singh, paragraph no.7 and 8 of the law report was reproduced with a specific observation that Section 107 and 108 of the Customs Act, do not contemplate immediate arrest of a person, being summoned in connection with an enquiry, but only contemplate surrendering to the custody of the customs officer, which could subsequently lead to arrest and detention.

The most pertinent observation in the law report reads thus:

*"27. The interpretation of "arrest" and "custody" rendered by the Full Bench in Roshan Beevi case may be relevant in the context of Sections 107 and 108 of the Customs Act where summons in respect of an enquiry may amount to "custody" but not to "arrest", but such custody could subsequently materialise into arrest. The position is different as far as proceedings in the court are concerned in relation to enquiry into offences under the Penal Code and other criminal enactments. In the latter set of cases, in order to obtain the benefit of bail an accused has to surrender to the custody of the court or the police authorities before he can be granted the benefit thereunder. In Vol. 11 of the 4th Edn. of Halsbury's Laws of England the term "arrest" has been defined in Para 99 in the following terms:*

*"99. Meaning of arrest. Arrest consists in the seizure or touching of a person's body with a view to his restraint; words may, however, amount to an arrest if, in the circumstances of the case, they are calculated to bring, and do bring, to a person's notice that he is under compulsion and he thereafter submits to the compulsion."*

*28. The aforesaid definition is similar in spirit to what is incorporated in Section 46 of the Code of Criminal Procedure. The concept was expanded by this Court in State of U.P. v. Deoman Upadhyaya wherein it was inter alia observed as follows: (AIR p. 1131, para 12)*

*"12. ....Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody: submission to the custody by word or action by a person is sufficient. A person directly giving to a police officer by word of mouth information which may be used as evidence against him, may be deemed to have submitted himself to the 'custody' of the police officer....."*

*29. The sequitur of the above is that when a person, who is not in a custody, approaches the police officer and provides information, which leads to the discovery of a fact, which could be used against him, it would be deemed that he had surrendered to the authority of the investigating agency.*

*30. It must, therefore, be held that the views expressed by the High Court in Dinesh Kumar's writ petition regarding arrest were incorrect, while the views expressed in the writ petitions filed by Lalit Kumar and Bhupinder correctly interpreted the meaning of the expressions*

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*"arrest" and "custody". However, how far the same would apply in the ultimate analysis relating to the filling up of Column 13(A) is another matter altogether."*

As per Halsbury's Laws of England (4<sup>th</sup> Edn) Volume 11, para 99 'Arrest' consist of the actual seizure or touching of a persons body with a view to his detention.

The mere pronouncing of word "Arrest" is not an arrest, unless the person sought to be arrested, submits to the process and goes with the arresting officer.

In all contingencies, arrest amounts to detention of a person in contrast to the state of affairs, when he is a free man.

18 In this background, we had applied our mind to the facts placed before us in the wake of an argument advanced to the effect that from the moment the petitioner was intercepted by the Immigration officers around 10:00 p.m, on 13/08/2024, allegedly based on a Look Out Circular, he was deprived of his liberty and he ceased to be free. Thereafter, he was send to the custody of SVPI Airport Police station, where he was detained until 1:00 p.m. on 14/08/2024, and therefore, his custody after almost 15 hours was handed over to Azad Maidan Police Station, but his production before the Magistrate is only after he was brought to Mumbai on 14/08/2024, at 7:00 p.m.

19 Responding to the said assertion, the police inspector, Azad Maidan Police Station, Mumbai, has affirmed an affidavit on 28/08/2024, providing the details of the complaint lodged by one Sharadkumar Kejariwal on behalf of M/s A.P. Trading, alleging that

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the petitioner Hem Shah is the owner of M/s PT Sinar Laut Biru Logam Perkasa Jaya in Jakarta. It is alleged that pursuant to the Agreements entered between the parties, an offence is committed as the complainant alleged that he was cheated to the tune of USD, 5,02,801.25 (Rs.3,50,00,000), which resulted in registration of C.R. No. 225 of 2019 by invoking Section 420 r/w 34 of IPC. As the suspected accused was not traced during the course of investigation, case was classified as 'A' summary by the Metropolitan Magistrate on 16/07/2020.

The deponent of the affidavit has stated that in connection with the said C.R. the accused was arrested, on 14/08/2024, and produced before the Additional CJM, 37 Court Esplanades, Mumbai on 15/08/2024, when he was granted police custody till 24/08/2024, and thereafter he was remanded to judicial custody.

20 Narrating the justification of arrest, the affidavit state that the arrest of petitioner was based on valid Look Out Notice issued by Ministry of Home Affairs, Bureau of Immigration and after intercepting him at Ahmedabad Airport, by the Immigration Department, his identity was verified through his passport and travel documents, and therefore, the 'A' summary due to inability to trace the accused was reopened.

The deponent has also made the following specific statement:

*"The initial detention of the applicant was solely for inquiry purposes, to confirm his identity and complete necessary formalities. The formal arrest was made only after the steps were completed and the applicant was produced before the Magistrate within the mandate of 24 hours period".*

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In paragraph no.8, the deponent has asserted as below:

*“I state that, on 13.08.2024, at about 22.00 hours, the applicant was intercepted by the Ahmedabad Airport Immigration department by Immigration Officer Shri Nilesh Salokhe. He contacted Azad Maidan Police Station to confirm whether the said person is a wanted accused in the case registered at Azad Maidan Police Station, Mumbai. Accordingly, the Azad Maidan Police Station verified the facts from Crime Register and FIR through CCTNS record. It was found that the said crime was classified as “A” summary since the suspected accused were not traceable in India. The facts were communicated to the above immigration officer. The Immigration Officer informed that they would hand over the intercepted accused to the local police station, i.e. Airport Police Station, Ahmedabad, and informed that He,Shah, i.e., the present applicant is detained as per the Lookout Notice. Accordingly, the facts were informed to the Sr. PI Azad Maidan Police station and the DCP Zone-1, Mumbai. As per the instructions of the DCP Zone-1, Mumbai, the Sr. PI prepared a team and asked them to verify the said facts and bring him to Mumbai. He further entrusted the necessary steps be initiated to reopen the “A” Summary report granted by the Esplanade Court.”*

21 In paragraph 10 of the affidavit, a specific statement is made that when the team along with the petitioner, returned to Mumbai from Ahmedabad at around 21:27 p.m., his identity was confirmed and he was informed of the grounds of arrests in writing and his signature was obtained and an entry to that effect was taken in a station diary vide entry no.59/2024 and the copy of the grounds of arrest and general diary are placed along with the affidavit.

Another statement in the affidavit also garnered our attention which read thus:-

*“In view of the present facts, it is humbly submitted that, from 13.08.2024 at 22:00 pm until the custody was received by the Azad Maidan police station on 14.08.2024, the procedure was*

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*part of the arrest process. At that point of time, there was no arrest effect but only a detention to complete the procedure. After establishing his identity, custody was taken on 14.08.2024 at 3.00 pm at the Airport Police Station, which clearly shows that the custody was obtained only for inquiry process. After obtaining the said custody on 14.08.2024, the applicant was produced before the Ld. Magistrate on 15.08.2024, within 24 hours. Hence, it is crystal clear from the record that the concerned police station complied with Section 50 and 57 of the CrPC in accordance with the mandate of the law.”*

22 On reading of the above portion of the affidavit, the intention of the investigating officer has surfaced on record, since he has deposed that the ‘applicant was detained as per the Lookout Notice’ and a specific statement that from 13/08/2024, at 22:00 p.m. ‘until the custody was received by Azad Maidan Police Station on 14/08/2024, the procedure was part of the arrest process’.

At one point of time, the deponent has attempted to suggest that there was no arrest effected, but he was also detained to complete the procedure.

23 The process adopted by the respondent clearly falls foul of Section 57 of the Code, which has prescribed that no police officer shall detain in custody a person arrested without warrant for a period more than 24 hours.

We had specifically directed the papers to be called from the SVPI Airport and we have received the necessary document from AFRRO, BOI Ahmedabad, which has made an entry in respect of ‘Detection of LOC subject’ in reference to the file No.13/Ahd/Bol/LOC-LOP/SVPIA/2024-2442, dated 13/08/2024.

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The aforesaid document placed before us has clearly recorded as under:-

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| Type of LOC<br>(Discreet/Detention/BL/Prevention):-                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Detain and Handover to Police and Inform Originator.                          |
| Originator Reference No. with date :-                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 3699/DCP/Zone 1/2019 dated 11/12/2019                                         |
| Action to be taken as per LOC :-                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Detain and handover intercepted person to local Police and inform Originator. |
| Remarks in LOC                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Other Ph. No. of Originator 9923139999, 02222623050, 02223010032              |
| Action Taken : Today on 13.08.2024, a Singapore national namely Shah Hem Prabhakar (Male), arrived from Singapore Airlines flight No.SQ-504, approached for arrival immigration clearance and was found to be an LOC subject originated by Deputy Commissioner of Police, Zone I, Mumbai, Walchand, Hirachand Marg, Fort Mumbai-400001. As per remarks in the LOC, "Detain and Handover Intercepted Person to Local Police and Inform Originator". The subject was detained and handed over to SVPI Airport Police Station. The originator was informed telephonically +91-9870114485 (Sh. Pawale, PI, Azad Maidan PS, Mumbai) and +91-8976953139 (Sh. Parkhe, PSI). |                                                                               |

24 From reading of the above, we find substance in the statement of Mr. Ponda that from 13/08/2024, when the petition was intercepted at around 10:00 p.m. on 13/08/2024, he was detained firstly at SVPI Airport, in pursuance of the lookout notice issued against him on his detection and though the information was submitted to the originator (the police which has registered the FIR), he was detained and his custody was handed over to SVPI Airport Police Station. Thereafter, his custody was transferred to Azad Maidan Police Station, who brought him to Mumbai, where he is shown to be arrested at 23:08 p.m. on 14/08/2024. His remand in custody is

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beyond the statutory period of 24 hours, as he was produced on 15/08/2024, at around 12:30 p.m. before the Metropolitan Magistrate.

In totality, it can be seen that he has been detained for almost 30 hours till his production before the concerned Magistrate.

The production of the petitioner before the Magistrate after 24 hours is thus in the teeth of Section 57 of Code of Criminal Procedure, which clearly amounts to violation of the fundamental right of the petitioner guaranteed under clause (2) of Article 22 of the Constitution.

Despite the vehement argument of the intervenor Mr. Kadam, attempting to justify the action of the respondent, after we have heard Mr. Yagnik and perused the affidavit filed on behalf of the respondent, we are not impressed by his argument that the petitioner was not arrested, but he was in a formal custody as he was put behind lockup, as there was no place to keep him way.

25 Another ground raised in the petition is about non furnishing the grounds of the arrest.

Assuming for the sake of argument that the arrest was effected in Mumbai, perusal of the remand report reflect that the accused is shown to be arrested on 14/08/2024 at 11:08 p.m.

What is recorded in the remand application is the justification of his arrest, considering the seriousness of the offence, and the necessity of his police custody for undergoing investigation but not a single document is produced before us in support of the

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submission by Mr. Yagnik, that the grounds of arrest have been communicated to him in writing.

Along with the affidavit of the respondent, a copy of the notice dated 14/08/2024 is annexed, (Annexure E) together with the case diary.

The notice issued under Section 41 (1) (b) of the Code of 1973, evidently has set out the reasons of his arrest, which definitely in the wake of the authoritative pronouncement of the Apex Court in case of Pankaj Bansal (supra) is distinct from the 'grounds of arrest'.

The station diary of Azad Maidan Police Station dated 14/08/2024, at 21:27 hours record that on receipt of the information from Ahmedabad Airport about detention of Hem Shah, in the backdrop of the LOC which was open, he was detained, and his custody was transferred to Airport Police Station. Thereafter, the police team as instructed by ACP Circle-I, reached Ahmedabad at around 15:00 hours and the accused was brought to Azad Maidan Police Station and his custody is handed over to the Police Inspector investigating the offence.

The station diary at 23.08 hours which talk of his arrest, record that since the role of the accused in the subject offence is established, after complying the directives of the Apex Court, he has been arrested, and the information about his arrest have been furnished to Rakesh Bhagwandas Dalal, his brother-in-law.

The Station diary record that, he was informed of the grounds of arrest in writing before the arrest was actually effected and he was also apprised of the grounds in Hindi language.

*Tilak*

26 When repeatedly asked whether the petitioner was served with the grounds of arrest in writing, but not a single document to that effect is placed before us, which would have persuaded us to repel the contention advanced on behalf of the petitioner that the arrest is in flagrant violation of Section 50 of the Code of Criminal Procedure, as well as Article 22 (1) of the Constitution. What is contained in the remand application are the reasons for his arrest, which cannot be equated with the 'ground of arrest'.

27 We also find substance in submission of Mr. Ponda that in the subject CR registered with Azad Maidan Police Station, on 28/09/2019, he was arraigned as accused no.1, but since the offence, which was invoked was punishable for less than 7 years, no procedure under Section 41 (A) was adhered to and in fact on his arrest, he was issued a notice under Section 41 (1)(b) which offer the reasons for his arrest.

The aforesaid discussion with reference to the authoritative pronouncements on the point of 'Arrest', lead us to an inference that the custody of the petitioner right from his interception at 10:00 p.m. on 13/08/2024, at Ahmedabad Airport, amounts to his arrest, which, being non-compliant with the Constitutional safeguards guaranteed under Article 22(1) and (2) of the Constitution and Section 50 of the Code of Criminal Procedure make his arrest illegal being violative of his fundamental rights.

We therefore declare the arrest of the petitioner to be illegal, as a result, subsequent remand orders remanding him to police custody are declared as illegal.

*Tilak*

Though we do not deem it appropriate to grant stay of the investigation, which is one of the prayers in the petition, we deem it appropriate to direct his release from custody, by issuing writ in the nature of Habeas Corpus, by declaring his custody/incarceration to be illegal.

28 By making the Writ Petition absolute in terms of prayer clause (a) and (b), the petitioner is entitled to be set at liberty, forthwith.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)