



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1762 OF 2013

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Sambhaji Achyutrao Patil]
Age: 52 years, Occupation: Police]
Inspector, Residing at: Plot No.34,]
Koyana Sanmitra Co-operative]
Housing Godoli, Vilaspur,]
Taluka: Satara, District : Satara.] Petitioner.

V/s

- 1] The State of Maharashtra]
[Through the Additional Chief]
Secretary, Home Department, State]
of Maharashtra, Mantralaya, Mumbai]]
]
2] Director General of Police,]
State of Maharashtra, having office]
at Maharashtra Police Headquarters]
Shahid Bhagatsingh Marg-1, Colaba]
Mumbai.]
]
3] The Special Inspector General of]
Police, Kolhapur Police Range,]
having Office at : Office of the]
Special Inspector General of Police]
Kolhapur Police Range, Kasba Bawda,]
Kolhapur.]
]
4] The Superintendent of Police, Satara]
having Office at: Police Head Quarters]
73, Malhar Peth, Satara, District Satara.]
]
5] The Satara City Police Station]
District Satara.]

6] The Karad City Police Station]	
District Satara.]	
]	
7] Shri K.M.M. Prasanna]	
Superintendent of Police, Satara]	
having office at: Police Head Quarters]	
73, Malhar Peth, Satara, District Satara.]	
]	
8] Shri Amol S. Tambe]	
Additional Superintendent of Police,]	
Satara, having Office at: Police Head]	
Quarters 73, Malhar Peth, Satara,]	
District Satara.] Respondents.

Mr. Sambhaji A. Patil, petitioner-in-person, present.

Mr. Ajay S. Patil, Additional Public Prosecutor for respondent nos. 1 to 6.

Mr. Ramprasad V. Gupta a/w Mr. Akshay S. Malviya & Mr. Rohit Vaishya, Advocates for respondent No.7.

Mr. Shekhar Jagtap a/w Ms. Sairuchita Chowdhary & Mr. Ishan Paradkar i/b J. Shekhar Associates, Advocates for respondent no.8.

CORAM: A.S. CHANDURKAR & RAJESH S. PATIL, JJ.

Date on which the arguments were concluded: 27/08/2024

Date on which the judgment is pronounced: 25/11/2024

JUDGMENT (Per A.S. Chandurkar, J.)

1] The petitioner, a police officer has filed this writ petition under Article 226 of the Constitution of India raising a grievance that his illegal arrest and detention on 13/03/2013 at the hands of the respondent no.8 – Investigation Officer has resulted in violation of his

fundamental rights. The petitioner seeks compensation for his alleged illegal arrest and detention and also conduct of inquiry against the concerned police officers who, according to him, are responsible for his illegal arrest and detention.

2] It is the case of the petitioner that he was discharging duties as an Officer-in-charge of Karad City Police Station from 09/06/2008. On 15/01/2009 First Information Report bearing No.19 of 2009 under the provisions of Sections 302, 307, 120-B, 201 read with Section 34 of the Indian Penal Code (for short, the Penal Code) as well as under the provisions of the Arms Act, 1919 came to be registered. The petitioner as an Investigation Officer conducted necessary inquiries and filed the charge-sheet within the prescribed time on 13/04/2009. On noticing the need to file a supplementary charge-sheet, the petitioner issued a communication to the Under Secretary to the Additional Chief Secretary in that regard on 20/06/2012. The petitioner was thereafter transferred from Karad City Police Station to the Local Crime Branch, Satara on administrative grounds after which further investigation in the aforesaid crime was undertaken by Police

Inspector Shri Muluk from 26/10/2010. He continued as an Investigation Officer till May 2012 after which the investigation was handed over to the Deputy Superintendent of Police Shri B.S. Tamgadge. While the petitioner was serving as Police Inspector attached to the Security Branch of Usmanabad District Police, a fax message was received from the Additional Superintendent of Police with regard to the aforesaid crime. According to the petitioner, he attended office of the Additional Superintendent of Police on 08/01/2013 and answered various queries made to him with regard to the investigation carried out in Crime No.19 of 2009. The petitioner again attended the office of the Additional Superintendent of Police on 13/03/2013. On that day, at about 2.00 P.M. he was informed by the 8th respondent that he had been placed under arrest in connection with offence punishable under Sections 201 and 218 of the Penal Code with regard to Crime No.19 of 2009. No Memorandum of Arrest was prepared immediately and the petitioner was detained in the office of the respondent no.8. Despite a request made by the petitioner to inform his near friends to come to the office of the respondent no.8 and furnish security and bail bonds, that exercise was

not undertaken.

3] On 14/03/2013, the petitioner was produced in the Court of the learned Judicial Magistrate, First Class. A request was made for seeking police custody remand of various accused in Crime No.19 of 2009 which included the petitioner. The learned Judicial Magistrate, First Class on 14/03/2013 considered the said request made by the Investigation Officer. It was found that there was no material placed to indicate any actual participation of the petitioner in the conspiracy or murder of deceased Sanjay Patil with regard to which Crime No.19 of 2009 had been registered. The learned Magistrate further observed that allegations levelled against the petitioner were with regard to alleged lacunae kept by him during the course of investigation which would amount to a distinct offence and which could not be clubbed with the main offence. The police remand report showed that offences under Sections 201, 218 and 221 of the Penal Code were attracted insofar as the petitioner was concerned. Since these were bailable offences, police custody remand was denied. The petitioner was remanded to Magisterial Custody remand till 28/03/2013.

The petitioner immediately moved an application for grant of bail before the learned Magistrate on 14/03/2013. The learned Magistrate observed that the offences attributed against the petitioner were under Sections 201, 218 and 221 which were bailable offences and hence directed his release on furnishing a bond of Rs 15000/- with conditions.

4] The State of Maharashtra being aggrieved by the order dated 14/03/2013 passed by the learned Magistrate on the remand report, preferred a Revision Application under Section 397 read with Section 439(2) of the Code of Criminal Procedure, 1973 (for short, the Code) before the Sessions Court. By the judgment dated 22/03/2013 the learned Additional Sessions Judge, Satara held that the order passed by the learned Magistrate was legal and proper inasmuch as the offences alleged to have been committed by the petitioner were bailable in nature. Accordingly, the Revision Application preferred by the State of Maharashtra came to be dismissed.

Against the order remanding the petitioner to Magisterial Custody as passed on 14/03/2013 by the learned Magistrate, the State of Maharashtra filed a Revision Application under Section 439(2) of the Code praying that the order granting bail be set aside and the petitioner be remanded for custodial interrogation. The learned Additional Sessions Judge, Satara on 22/03/2013 rejected the said application by observing that the order passed by the learned Magistrate granting bail to the petitioner was legal and proper requiring no interference. It was further observed that even assuming that said offences alleged against the petitioner were non-bailable, his custodial interrogation was not necessary. Thereafter, the petitioner on 30/03/2013 issued a communication to the Director General of Police raising a grievance as regards his illegal arrest and detention in the aforesaid matter and prayed for appropriate relief in the form of grant of compensation and also for an investigation to be held in the matter of his illegal arrest and detention. It is in the aforesaid factual backdrop that the petitioner has filed this criminal writ petition seeking the reliefs referred to hereinabove.

5] The petitioner-in-person after referring to the relevant factual events that transpired during the time he was the Investigation Officer in Crime No. 19 of 2009 from 15/01/2009 till 26/08/2010 submitted that his arrest and detention on the ground that the investigation carried out by him was defective was contrary to law. Referring to the provisions of Section 45 (2) of the Code it was submitted that in absence of any sanction of the State Government, the petitioner who was a member of the police force could not have been arrested. Reference was made to the Notification dated 23/05/1979 that was issued by the State Government in exercise of powers under Section 45(2) of the Code that mandated obtaining such consent prior to making any arrest. Since the investigation was undertaken by the petitioner in discharge of official duties, sanction of the State Government ought to have been obtained before arresting him. In that regard reliance was placed on the order dated 24/11/2015 passed in Criminal Anticipatory Bail Application No.1784 of 2014 [*Ravindra K. Manjare vs. The State of Maharashtra*] wherein the Notification dated 23/05/1979 was considered. Further, the requirements of Section 41B of the Code had not been duly satisfied. The Investigation Officer

failed to prepare the Memorandum of Arrest that was required to be attested by atleast one witness who was a family member of the petitioner. Copy of the Arrest Memo was also not served on the petitioner. The reasons for the petitioner's arrest were also not recorded in the Arrest Memo. As a result, the law laid down by the Supreme Court in *D.K. Basu vs. State of West Bengal* (1997) 1 SCC 416 was violated. It was further submitted that after his arrest, the petitioner was not produced either before a Magistrate having jurisdiction in the case or before the Officer-in-charge of a Police Station as required by Section 56 of the Code. Referring to the statement made by the respondent no.7 – Supertintendent of Police dated 30/07/2013 it was pointed out that this position was duly admitted. It was then submitted that there was breach in the compliance of the provisions of Section 50 of the Code inasmuch as the particulars of the petitioner's arrest as well as the grounds for his arrest were not indicated. Reliance in this regard was placed on the judgment of the Supreme Court in *Prabir Purkayastha vs. State (NCT of Delhi)* 2024 INSC 414 wherein the difference between the phrase 'reasons for arrest' and 'grounds of arrest' had been indicated. In

absence of the grounds of arrest of the petitioner being indicated, there was non-compliance with the provisions of Section 50 of the Code. Yet another patent illegality was that though the accusations made against the petitioner were in respect of offences that were bailable in nature, the petitioner's bail application came to be rejected by the respondent no.8 – the Investigation Officer in an illegal manner. Referring to the remand order dated 14/03/2013 passed by the learned Judicial Magistrate First Class, Court No.2 it was pointed out that in paragraph 9 of the order it was clearly observed that the police remand report indicated that it was only the offences punishable under Sections 201, 218 and 221 of the Penal Code that were attracted and that all the said offences were bailable in nature. This fact had been specifically mentioned by the petitioner in his application for bail made at 18.25 hrs on 13/03/2013 before the Investigation Officer. As a result of refusal to release the petitioner on bail, he had to suffer illegal arrest and detention. The petitioner thus claims that he was required to suffer illegal detention for about twenty hours. The petitioner therefore was justified in seeking the holding of an enquiry against the concerned police officers.

In view of the illegal manner of the petitioner's arrest and detention, there was a breach of the provisions of Article 21 of the Constitution of India thus giving rise to the present claim for compensation. Placing reliance on the decisions in *Smt Mohini Naraindas Kamwani & Anr. vs. Sr. Police Inspector, Vashi Police Station & Others*, 2014 ALL MR (Cri) 93, *Miss Veena Sippy vs. Mr. Narayan Dumbre & Ors.*, 2012 ALL MR (Cri) 1263, *Niraj Ramesh Jariwala & Ors vs. Mahadeo Pandurang Nikam & Others*, 2013 (2) Bom CR (Cri) 260 and *Rizwan Ahmed Javed Shaikh and Others vs. Jammal Patel and Others*, (2001) 5 SCC 7, it was submitted that the petitioner was entitled for the reliefs prayed for in the writ petition. It was pointed out that the petitioner was a decorated Police Officer having been awarded the President's Police Medal for meritorious service along with various other awards. As a result of his illegal arrest and detention, the petitioner and his family members had suffered mental trauma. After his retirement, the petitioner lost various job opportunities due to his illegal arrest. On the aforesaid basis therefore the petitioner prayed for grant of monetary compensation of Rs 10

lakhs.

6] Shri Ajay Patil, the learned Additional Public Prosecutor for the respondent nos.1 to 6 - State of Maharashtra and its officers opposed the prayers made in the writ petition. He submitted that insofar as prayer clause (a) was concerned, the necessary inquiry as sought by the petitioner was conducted during the period from 21/09/2013 to 30/04/2014. In the said inquiry no illegality whatsoever in the arrest of the petitioner was found and the matter was thereafter closed. He therefore submitted that nothing survived for consideration insofar as prayer clause (a) was concerned. As regards prayer clause (b), it was submitted that the petitioner sought to rely upon the observations made in various orders passed while deciding the prayer for grant of remand and thereafter for grant of bail. The observations made in the said orders were of a prima facie nature and the petitioner could not rely upon the same in support of his prayer for grant of compensation. The petitioner was arrested after following the due process of law and after complying with all mandatory requirements. In absence of any illegality being shown with regard to his arrest and detention, the petitioner was not entitled to any relief whatsoever. Since the arrest

and detention of the petitioner was in accordance with law, no claim for compensation could be made. In that regard reliance was placed on the decision in *State of Maharashtra and Others vs. Tasneem Rizwan Siddiquee AIR 2018 SC 4167*. It was thus submitted that the writ petition was liable to be dismissed.

7] Shri Ramprasad Gupta, the learned counsel appearing for respondent no.7 - Superintendent of Police, Satara, besides adopting the submissions made on behalf of the State of Maharashtra submitted that on the allegations made by the petitioner, an inquiry was held by the Special Inspector General of Police wherein nothing illegal was found. Hence prayer clause (a) did not survive. It was further submitted that the petitioner had availed various other remedies to seek redressal of his grievances. He had filed a criminal complaint by taking recourse to the provisions of Section 156(3) of the Code but no relief was granted by the learned Magistrate. The Revision Application preferred by the petitioner challenging the said order was also rejected. Writ Petition No.1908 of 2016 preferred by the petitioner challenging those orders was pending. The petitioner had also

approached the State Human Rights Commission raising a grievance with regard to his alleged illegal arrest. No relief was granted in the said proceedings. It was pointed out that though the petitioner had addressed a complaint to the respondent no.7, there was no grievance made against the said respondent therein. The provisions of Sections 50 and 56 of the Code had been duly complied with and the procedure prescribed had been followed while arresting the petitioner. The petitioner had signed the Arrest Memo dated 13/03/2013 alongwith panch witnesses. No grievance whatsoever was made by the petitioner at that point of time. It was thus submitted that in absence of any case being made out by the petitioner for grant of the reliefs sought, the writ petition was liable to be dismissed.

8] Shri Shekhar Jagtap, the learned counsel appearing for respondent no.8 - Investigation Officer in addition to the submissions made by the learned Additional Public Prosecutor relied upon the inquiry report as submitted by the Special Inspector General of Police dated 21/09/2013. He submitted that after considering the matter in detail, no substance was found in the grievance raised by the petitioner. He denied that there was any illegality whatsoever in the

arrest and detention of the petitioner. The petitioner had acted as Investigation Officer during the period from 15/01/2009 to 25/08/2010. Though the petitioner had filed the final investigation report on 3/2/2010, the name of an accused, Shri Uday Patil had not been mentioned therein. After the petitioner was transferred and the investigation was subsequently handed over to the respondent no.8 in September 2012, he had undertaken further investigation. The said accused Shri Uday Patil was arrested. Considering the involvement of the petitioner in the alleged offence he was also arrested on 13/03/2013. Reference was made to the stand taken by respondent no.8 while opposing the prayer for bail made by the petitioner on the said date. It was submitted that considering the alleged involvement of the petitioner so as to attract the provisions of Section 120-B of the Penal Code, he was rightly refused bail. Reference was also made to the remand order dated 14/03/2013 wherein it was recorded that the petitioner had no grievance with regard to his treatment while under arrest. It was thus submitted that after following the due process of law, the petitioner came to be arrested. The provisions of Section 45(2) of the Code were not attracted in the facts of the present case

since the said provision related to ‘maintenance of public order’ with which the petitioner in the present case was not concerned. Similarly, the provisions of Section 160 of the Maharashtra Police Act, 1951 (for short, the Act of 1951) were also not applicable. The petitioner was merely trying to delay the conclusion of the criminal trial wherein his role in the said crime would be established. The petitioner had also approached the State Human Rights Commission but was not granted any relief whatsoever. Sanction under Section 197 of the Code for prosecuting the petitioner for his alleged involvement in Crime No.19 of 2009 was granted on 24/10/2013. However, the petitioner had challenged the said order in Writ Petition No.4766 of 2017 and on 03/08/2018 the effect of the said order had been stayed. To support his contentions, the learned counsel placed reliance on the judgment of the Division Bench in *Gopal Ramdas Shetye vs. The State of Maharashtra* passed in Criminal Writ Petition No. 3960 of 2015 decided on 5/5/2017, *Krishna Lal Chawla and Others vs. State of Uttar Pradesh and Another*, (2021) 5 SCC 435 and *Ram Nath Singh vs. State of U.P. and Others*, 2002 ALL LJ 1847 . It was thus submitted that the writ petition was liable to be dismissed.

9] In the aforesaid backdrop, we have heard the petitioner-in-person as well as the learned counsel appearing for the respondents opposing the writ petition. We have also perused the affidavit-in-reply filed on behalf of the respondent nos. 1, 7 and 8 as well as the affidavits-in-rejoinder filed by the petitioner. At the outset, we may note that by prayer clause (a) the petitioner had sought a direction to be issued to the State of Maharashtra through the Ministry of Home Affairs to initiate an inquiry against the respondent no. 8 with regard to his illegal arrest and detention. During pendency of the writ petition, an inquiry was held on the complaint made by the petitioner and a report to that effect was prepared by the Special Inspector General of Police, Kolhapur Region. This report dated 21/09/2013 was submitted to the Director General of Police, Maharashtra State, Mumbai. Since cognizance of the petitioner's complaint has been duly taken after which an inquiry was conducted and a report to that effect has been submitted to the Director General of Police, Maharashtra State, Mumbai, prayer clause (a) as made stands answered.

10] Coming to prayer clause (b) in the writ petition whereby the petitioner seeks compensation of an amount of Rs 10 lakhs from respondent nos. 1, 2, 7 and 8 for his illegal arrest and detention resulting in violation of his fundamental rights, suffice it to observe that the law in this regard is well settled. A public law remedy in the matter of seeking compensation on account of violation of the fundamental rights guaranteed under Article 21 of the Constitution is now recognised. In *D.K. Basu* (supra) it has been held that in an appropriate case, the remedy for redressal of established infringement of the fundamental right to life of a citizen by public servants and the State gives rise to a vicarious liability for such act. This remedy under the public law jurisdiction is in addition to the traditional remedies and not in derogation of the same. These principles have been noted in *Rini Johar and another vs. State of Madhya Pradesh and Others*, (2016) 11 SCC 703 by the Supreme Court. The same have been followed by various co-ordinate Benches of this Court, which decisions have been relied upon by the petitioner. It is therefore clear that in a case of gross violation of the fundamental right under Article 21 of the Constitution of India, compensation if awarded would have to be paid

by the State Government with a liberty to it to recover the same from officers found guilty of dereliction of duty by following the due process of law. It is on this premise that the claim made by the petitioner deserves consideration.

11] The facts on record indicate that when the petitioner was serving as Officer-in-charge of Karad City Police Station, District Satara, Crime No.19 of 2009 came to be registered under provisions of Sections 302, 307, 120-B, 201 read with Section 34 of the Penal Code. The petitioner was the Investigation Officer and on completion of investigation he filed the charge-sheet on 13/04/2009. Further investigation in connection with the said crime was also carried out by the petitioner under Section 173(8) of the Code after which additional material was submitted by him on 03/02/2010. The petitioner was thereafter transferred as a result of which further investigation in the said crime was conducted by Police Inspector Shri Muluk from 26/10/2010 to May 2012. On 01/09/2012 pursuant to an order passed by respondent no.7, the investigation was handed over to the respondent no.8. It is at that point of time that the petitioner was called upon to explain the manner of investigation undertaken by him.

During the course of such investigation, the petitioner appeared before the respondent no.8 on 13/03/2013 and at about 2.00 P.M. the petitioner was informed that he was being arrested in connection with offences punishable under Sections 218 and 201 of the Penal Code. The petitioner was arrested at about 17.15 hours on 13/03/2013. He was thereafter released on bail on 14/03/2013 pursuant to the order passed by the learned Judicial Magistrate, First Class remanding him to Magisterial Custody. It is with regard to this period that the petitioner has sought to raise a grievance of his illegal arrest and detention in the matter. In the present proceedings we are concerned with the events that transpired from the time of the petitioner's arrest and his subsequent enlargement on bail. The grievance raised by the petitioner is with regard to the illegal manner of his arrest which was effected in a manner contrary to the law laid down by the Supreme Court of India.

12] On the basis of the material on record it would be necessary to consider whether the arrest and detention of the petitioner was in accordance with law or not.

(a) As regards breach of provisions of Section 45(2)

of the Code - In this regard, it is to be noted that under Section 45(1) of the Code, there is a prohibition for arresting a member of the Armed Forces of the Union for anything done or purported to be done in the discharge of his official duties without obtaining the consent of the Central Government. Under Section 45(2), the State Government can make the provisions of Section 45(1) applicable to members of the Force charged with the maintenance of public order by issuing a notification. On such Notification being issued, consent of the State Government is required to be obtained. Notification dated 23/05/1979 has been issued by the Home Department of the State Government making such protection available to Police Officers as defined under the Act of 1951 who are charged with maintenance of public order. It is not in dispute that the petitioner is a Police Officer defined under Section 2(11) of the Act of 1951. In this regard, it has been specifically pleaded by the petitioner that no prior consent of the State of Maharashtra was obtained by the

respondent no.8 before arresting the petitioner. There is no specific denial of this aspect nor has it been shown by the respondent no.8 that after obtaining necessary consent of the State Government under Section 45(2) of the Code, such arrest of the petitioner was made.

It was urged on behalf of the respondent no.8 that the Notification dated 23/05/1979 issued by the Home Department in exercise of powers conferred by Section 45(2) of the Code pertains to a member of the force in the State “charged with maintenance of public order”. Hence, the petitioner could not take advantage of this Notification dated 23/05/1979 as he was merely acting as an Investigation Officer and was not concerned with the “maintenance of public order”. The petitioner has however relied upon the decision in *Rizwan Ahmed Javed Shaikh and Others* (supra) to contend that the Notification dated 23/05/1979 was applicable inasmuch as the petitioner, as an Investigation Officer, was discharging his

official duties and was concerned with “maintenance of public order”.

In the aforesaid decision, the Supreme Court considered the Notification dated 02/06/1979 also issued by the Home Department in exercise of the power conferred by Section 197(3) of the Code thereby making the provisions of sub-section (2) of Section 197 of the Code applicable to members of the force in the State charged with the “maintenance of public order”. Reference was made to the judgment of the Gujarat High Court in *Bhikhaji Vaghaji vs. L.K. Barot and Others*, (1981) 22 Gujarat Law Reporter 956. The High Court considered the Preamble of the Act of 1951 wherein it was stated that the Act was enacted to consolidate and amend the law relating to the regulation of the police force and exercise of powers and performance of functions by the State Government and by the members of the said force for the maintenance of public order. It was further observed that it was the duty of every member of the

police force to see that public order is maintained. The Supreme Court agreed with the aforesaid observations. It further held that the real test to be applied to attract applicability of Section 197(3) of the Code was whether the act done by the police officer alleged to constitute an offence was so done by the public officer while acting in his official capacity.

In our view, the aforesaid legal position would also apply to the Notification dated 23/05/1979 in the context of the provisions of Section 45(2) of the Code. It cannot be disputed that the arrest of the petitioner was on account of the alleged faulty investigation carried out by him in Crime No.19 of 2009. This fact is also clear on reading the order dated 13/03/2013 passed by the respondent no.8 while rejecting the petitioner's request for his release on bail. The investigation was carried out by the petitioner as an Investigation Officer and was thus an act undertaken in discharge of official duty. Discharge of

official duty while undertaking such investigation would form a part of maintenance of public order. Consequently, the protection granted by Section 45(1) of the Code would be available and arrest of such police officer ought to be preceded by consent of the State Government. It is thus clear that the arrest of the petitioner is without obtaining necessary consent of the State Government as required by Section 45(2) of the Code.

(b) As regards breach of Section 50 of the Code -

Under the provisions of Section 50(1) of the Code, on arrest of a person without warrant, it is necessary for the police officer making such arrest to forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. It is the specific case of the petitioner that there has been a breach in this regard as full particulars of the offence leading to his arrest or the grounds of arrest have not been made known to him. These averments can be found in paragraph 3(o) of the writ petition. The same read as

under:

“3(o) That the Petitioner states that though he was arrested at 2 p.m. in the afternoon, the arrest memo was prepared between 5 p.m. and 05.15 p.m. The Petitioner further states that the Respondent No 8 had informed the Petitioner that he was arrested in connection with the offences punishable u/s 201, 218 of The IPC. The aforesaid two offences were bailable in nature and in view of this analogy as also the mandatory provision of Section 50(1) and Sec. 50 (2) of The Cr.P.C. it was mandatory upon the Respondent No 8 to inform the Petitioner regarding that fact and full particulars of the offence and grounds of arrest as well as that the offence was bailable and that he had the right to be released on bail. But the Respondent No. 8 did not furnish any information mentioned in Sec. 50 (1) and Sec. 50 (2) of the Cr.P.C. These are the mandatory provisions which respondent no. 8 did not comply with. The Respondent No 8 also did not comply with the provisions of Sec. 56 of the Cr.P.C. which are mandatory provisions.”

In the reply filed on behalf of respondent no.8, the

allegations as made by the petitioner have been denied in paragraph 18. The said paragraph reads as under:

“18. I say that the all allegations made by petitioner in both Para 3(o) of the Petition are not true and correct and same is denied and strongly opposed by me. The petitioner wrongly interpreted his role and claimed bail by filing an application before me immediately after his arrest. I specifically arrested him in the said murder case without bifurcating any independent liability of the Petitioner, as lacunae in the investigation would be found by the Competent Court during trial as lacunae without any malicious intentions and thereby the involvement of the Petitioner could be reduced by the Competent Court at the appropriate stage. However, in my opinion, the Petitioner neither acted in good faith nor investigated the case with bonafide and fair manner, rather the Petitioner and the accused no. 11 continued their conspiracy for concealing the material facts from the prosecution case since inception and thereby the Petitioner had commenced investigation with weak motive.”

It has however not been stated that the full particulars of

the offence for which the petitioner was arrested or other grounds for arrest were informed to the petitioner. The petitioner has relied upon the copy of his Arrest Memo dated 13/03/2013 as well as the Station Diary of Satara City Police Station also dated 13/03/2013 to substantiate the aforesaid ground. Perusal of the Arrest Memo and panchnama do not indicate that the particulars of the offence or grounds of arrest as contemplated by Section 50(1) of the Code have either been mentioned or had been conveyed to the petitioner.

The Supreme Court in *Prabir Purkayastha* (supra) has noted the significant difference in the phrase 'reasons for arrest' and 'grounds of arrest'. 'Grounds of arrest' ought to contain all necessary details in the hands of the Investigation Officer which necessitate the arrest of the accused. These are required to be conveyed to the arrested accused so as to provide him an opportunity of defending himself against custodial remand and for seeking bail.

Reference can also be made to the decision in *Rajesh s/o. Mohanlal Kothari and Others vs. The State of Maharashtra and Another*, 2020 ALL MR (Cri) 680 relied upon by the petitioner wherein it has been held that compliance of the provisions of Section 50 of the Code is mandatory in nature. It is thus clear that there has been a failure on the part of respondent no.8 in intimating the full particulars of the offence for which the petitioner was arrested or other grounds of arrest to the petitioner resulting in breach of Section 50 of the Code.

(c) As regards breach of Section 56 of the Code: As per Section 56 of the Code, a police officer making arrest without warrant is required to take or send the person arrested before the Magistrate having jurisdiction in the case or before the officer-in-charge of a Police Station without unnecessary delay. According to the petitioner, the Investigation Officer ought to have produced the petitioner after his arrest before the Superintendent of Police – respondent no.7 as he was superior in rank than the

Investigation Officer. This was not done resulting in breach of the requirements of Section 56 of the Code. In this regard, it is necessary to refer to the statement of the respondent no.7 dated 30/07/2013 made before the Special Inspector General of Police, Kolhapur Range, Kolhapur. In paragraph 3 thereof, he has stated as under:-

“03. In view of the provision of section 36 of Cr.P.C. the Superintendent of Police being superior in rank to an officer in charge of a Police Station, may exercise the same powers, throughout the local area of the district, as may be exercised by such officer within the limits of his station. It is also a fact that in view of the provision of section 56 of Cr.P.C. a police officer making an arrest without warrant is required to take or send the person arrested before a magistrate having jurisdiction in the case or before the officer in charge of a Police Station, without unnecessary delay. Additional SP Shri Amol Tambe, who had effected the arrest of the Applicant independently, however, did not bring or send the arrested person (Applicant) before me, as an officer in charge of the Police Station and thus the question of releasing the arrested

person by me does not arise.”

From the aforesaid statement, it becomes clear that in the light of the provisions of Section 36 of the Code, the respondent no.7 was superior in rank to the respondent no.8. After the arrest of the petitioner on 13/03/2013 without an arrest warrant, the respondent no.8 ought to have produced the petitioner before his superior officer, respondent no.7. The petitioner however was not so produced which position is beyond doubt in view of the statement of the respondent no.7. It is thus clear that had the petitioner been produced before the respondent no.7, he would have had an opportunity to exercise power under Section 56 of the Code. It therefore cannot be said that there has been any failure on the part of the respondent no.7 in not exercising power under Section 56 of the Code.

It is however seen that the respondent no.8 failed to produce the petitioner before the respondent no.7 in terms of Section 56 of the Code. The petitioner having been arrested on 13/03/2013 without warrant by the respondent

no.8, he ought to have been produced before the respondent no.7 who was a superior officer in rank to the respondent no.8. Section 56 of the Code requires such steps to be taken 'without unnecessary delay' thus indicating the mandatoriness of the said provision. It is thus clear that there has been a breach of the provisions of Section 56 of the Code after the petitioner's arrest insofar as the respondent no.8 is concerned.

(d) As regards breach of law laid down by the Supreme Court: In this regard, it is to be noted that under Section 41 of the Code, a discretion is given to a police officer who may without an order from the Magistrate and even without a warrant arrest any person for the contingencies stated therein. In *M.C.Abraham vs. State of Maharashtra*, (2003) 2 SCC 649, it has been held that even though the power conferred by Section 41 of the Code is discretionary in nature, a police officer is not always bound to arrest an accused even if the allegation made against him is of having committed a cognizable offence. Since an arrest is in the

nature of an encroachment on the liberty of a citizen and it also affects his reputation and status, such discretionary power has to be cautiously exercised. In *Siddharam Satlingappa Mhetre vs. State of Maharashtra*, (2011) 1 SCC 694, the Supreme Court has held that personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case. In case the arrest of an accused is imperative, in that event, the arresting officer must clearly record the reasons for the arrest of the accused before the arrest in the case diary. In exceptional cases where it becomes imperative to arrest the accused immediately, the reasons could be recorded in the case diary immediately after the arrest is made without loss of any time

The remand papers pertaining to the petitioner indicate that he was placed under arrest at 17.15 hours on 13/03/2013. However, the entry in the Station Diary has been taken at 23.30 hours on 13/03/2013. It is seen from

the record that after the petitioner was transferred from Satara and was discharging duties in Usmanabad District, the respondent no.8 on 08/01/2013 issued a questionnaire with regard to the nature of investigation undertaken by the petitioner. About seventeen queries were made to the petitioner and the same relate to deficiencies in the investigation in Crime No.19 of 2009. It thus becomes clear that the petitioner was called upon to answer the queries by appearing before the respondent no.8. The record does not indicate that it was an exceptional case where it became imperative for the Investigation Officer to arrest the petitioner immediately. The communication dated 08/01/2013 indicates that the respondent no.8 sought a written explanation from the petitioner. The petitioner submitted his say on 13/03/2013. Though it is not shown that it was imperative to immediately arrest the petitioner, the Station Diary entry was subsequently taken at 23.30 hours on 13/03/2013 which is about more than six hours after his arrest at 17.15 hours. We also find that in terms of

the law laid down in *M.C. Abraham* (supra), the power of arrest has not been cautiously exercised. This is for the reason that the accusations against the petitioner as can be gathered from the rejection of his bail application by the Investigation Officer on 13/03/2013, remand papers dated 14/03/2013 and the orders passed on the prayer for remand by the learned Magistrate all indicate that the same were in relation to the provisions of Sections 201, 218 and 221 of the Penal Code. All these offences are bailable in nature. It therefore becomes clear from the aforesaid material on record that the power of arrest has been exercised by the respondent no.8 without exercise of due discretion as expected. The arrest of the petitioner though effected at 17.15 hours on 13/03/2013, the Station Diary entry has been taken after more than six hours. The reasons for the petitioner's arrest have also not been indicated in the Station Diary entry. All these shortcomings indicate that there has been a breach of the law laid down by the Supreme Court in the decisions referred to hereinabove. In

these facts, the ratio of the decisions in *Tasneem Rizwan Siddiquee, Krishna Lal Chawla and others and Gopal Ramdas Shetye* (supra) cannot be made applicable.

13] Thus from the aforesaid discussion, we find that the petitioner was arrested in an illegal manner and thereafter detained which was not in accordance with the provisions of Sections 45(2), 50 and 56 of the Code as well as the law laid down by Supreme Court of India. In *D.K. Basu* (supra) it has been held that monetary compensation is an appropriate remedy for redressal of established infringement of the fundamental right to life of a citizen by public servants and the State is vicariously liable for their acts. It is further held that in the assessment of compensation, the emphasis has to be on the compensatory element and not on the punitive element. A case therefore has been made out by petitioner for seeking compensation in public law on account of his illegal arrest that has resulted in violation of his fundamental rights under Article 21 of the Constitution of India. The petitioner remained in custody for about twenty hours. He is a recipient of the President's Police Medal on 26/01/2004 for his

meritorious service. He has also received the Director General of Police Insignia on 15/08/2004 for rendering excellent service.

14] We therefore find the petitioner is entitled to receive reasonable compensation of an amount of Rs 2 lakhs from the respondent no.1. The said amount shall be paid to the petitioner within a period of eight weeks from today failing which same shall carry interest @ 6% per annum till realisation. Though the amount of compensation has been directed to be paid by the respondent no.1, it would be open for the State Government to recover the same from the officer/s found guilty of dereliction of duty by following the due process of law.

15] Rule is made partly absolute in aforesaid terms.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]