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Bombay High Court

Case No: Criminal Writ Petition No. 1762 Of 2013

Sambhaji Achyutrao Patil

APPELLANT

۷s

State Of Maharashtra And Ors

RESPONDENT

Date of Decision: Nov. 25, 2024

Acts Referred:

· Constitution of India, 1950 - Article 21, 226

• Code of Criminal Procedure, 1973 - Section 41B, 45(1), 45(2), 50, 50(1), 56, 156(3), 173(8), 197, 197(2), 197(3), 397, 401, 439(2)

- Indian Penal Code, 1860 Section 34, 120B, 201, 218, 221, 302, 307
- Maharashtra Police Act, 1951 Section 2(11), 160

Hon'ble Judges: A.S. Chandurkar, J; Rajesh S. Patil, J

Bench: Division Bench

Advocate: Sambhaji A. Patil, Ajay S. Patil, Ramprasad V. Gupta, Akshay S. Malviya, Rohit Vaishya, Shekhar Jagtap, Sairuchita Chowdhary, Ishan Paradkar, J. Shekhar Associates

Judgement

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 â€" 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 â€" 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 41 4wherein the difference between the

phrase â€~reasons for arrest' and â€~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 â€" 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, i twas 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 necessay 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 decsion in State of Maharashtra and Others vs. Tasneem Rizwan Siddiquee AIR 2018 SC 416.7

It was thus submmitted 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 petitoin 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 investgiation. 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

petitoner 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 righlty 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 â€~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,Â

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

petitioer. 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. 8Â 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 703b y 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 orderâ€. 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 orderâ€. 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 discharing his official duties

and was concerned with "maintenance of public orderâ€.

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 orderâ€. 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 acing 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:

 \hat{a} € ∞ 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.â€

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.â€

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'. â€~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 Ohers 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 Supertintendent of Police

â€" respondent no.7 as he was superior in rank than the Investigation Officer. This was not done resulting in breach of the requirements ofÂ

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.â€

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 responent 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 â€~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. InD .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.