(2015) 2 Crimes 385

Gujarat High Court

Case No: Special Criminal Application (Direction) No. 3898 of 2014 and Criminal Misc. Application Nos. 3007 and 10887 of 2014 in Criminal Misc. Application No. 3007 of 2014

Kantibhai Devsibhai Patel		APPELLANT
	Vs	
State of Gujarat		RESPONDENT

Date of Decision: Jan. 22, 2015

Acts Referred:
Constitution of India, 1950 - Article 22, 22(2)#Criminal Procedure (Amendment) Act, 2008 - Section 6#Criminal Procedure Code, 1973 (CrPC) - Section 160, 167, 41, 41(1), 41(1)(b)#Dowry Prohibition Act, 1961 - Section 4#Penal Code, 1860 (IPC) - Section 120(B), 120-B, 143, 147, 148#Prevention of Corruption Act, 1988 - Section 12, 13(1), 7, 8, 9

Citation: (2015) 2 Crimes 385

Hon'ble Judges: J.B. Pardiwala, J.

Bench: Single Bench

Advocate: I.H. Syed, Senior Counsel and B.M. Gupta, for the Appellant

Judgement

J.B. Pardiwala, J.
Since the issues raised in the above captioned matters are interrelated those were heard analogously and are being

disposed of by this common judgment and order.

2. The petitioner is sought to be prosecuted of the offence under Sections 213, 214, 217 and 120-B of the Indian Penal Code read with Sections

7, 8, 9, 12, 13(1) of the Prevention of Corruption Act, 1988 on the strength of a First Information Report registered with the DCB Police Station,

Surat vide I-CR No. 37/2013.

3. Case of the prosecution:--

3.1 A person, by name Asaram Bapu claims to be a Saint. His son, namely, Narayansai also claims to be a Saint. The father and son have many

Ashrams all over the State and one of those is situated at Ahmedabad. On 11th December, 2013 Shri J.K. Zala, Asst. Commissioner of Police,

''D'' Dvn., Surat City lodged a First Information Report referred to above making a reference in the same of one other offence registered on

6/10/2013 at the Jahangirpura Police Station vide C.R. No. 31 of 2013 for the offences punishable under sections 376, 377, 354, 357, 342, 346,

143, 147, 148, 149, 506(2) and 120-B of the Indian Penal Code against Narayansai. It appears that in the course of the investigation, the

investigating agency seized 42 bags containing documents from the Ashram premises of the co-accused Narayansai. With a view to see that the

case registered against Narayansai of the offence of rape gets weakened, a conspiracy is alleged to have been hatched by the accused persons

which includes the present applicant to bribe the Police Officers and see to it that the 42 bags containing various documents are replaced with the

42 bags containing other papers irrelevant for the purpose of investigation. It is the case of the prosecution that the applicant herein-original

accused No. 3 was the Administrator of the Ashram of Shri Asaram Bapu situated at Ahmedabad. He was handling all the financial matters of the

Ashram along with the other co-accused. It is alleged that the applicant along with the other co-accused arranged for Rs. 4.00 crore to be paid to

the police authorities by way of bribe for the purpose of securing the 42 bags containing documentary evidence and replacing the same with

irrelevant papers. It is the case of the prosecution that the 42 bags containing various documents relate to the total assets of Asaram Bapu and his

son Narayansai. The Commissioner of Police got the hint of such conspiracy which was hatched and accordingly the FIR being I-C.R. No.

37/2013 was registered.

3.2 It appears from the materials on record that few persons were arrested in connection with I-C.R. No. 37/2013 registered with the DCB Police

Station, Surat City. After completion of the investigation the police filed charge-sheet dated 9th February, 2014 in the Court of the Special Judge,

Surat City of the offence referred to above against the following 9 persons.

1) Chandubhai Mohanbhai Kumbhani

2) Uday Navinchandra Sanghani

3) Ketan Mahadv Patel

4) Dhiraj Nariman Patel

5) Hashmukh @ Hasudada Dalpatbhai Upadhyay

6) Bhavesh Chaturbhai Patel

7) Hitendrasinh Hamirsinh Waghela

8) Naresh @ Rupabhai Bhungdamal Manka

9) Narayan Sai.

In the charge-sheet the following persons were shown as the absconding accused.

1) Bhadresh Manharbhai Patel

2) Kaushik Vani

3) Kantibhai Devshibhai Patel (Applicant herein)

3.3 Thus, the applicant herein was shown as an absconding accused in the charge-sheet which was filed against 9 accused referred to above.

3.4 It also appears from the materials on record that since the applicant herein was shown in Column No. 2 of the charge-sheet as an absconding

accused, he thought fit to file Criminal Misc. Application No. 3007/2014 praying for the following reliefs:

A) This Hon''ble Court be pleased to quash and set aside the FIR bearing DCB Police Station, Surat City bearing 1st C.R. No. 37/2013 for the

alleged offences under Section 213, 214, 217 and 120(B) of IPC read with Section 7, 8, 9, 12, 13(1) of Prevention of Corruption Act as well as

charge-sheet dated 9/2/2014 qua present applicant as much as to the extent of showing name of the applicant in the charge-sheet as an absconding

accused.

(B) Pending hearing and final disposal of the present application, this Hon''ble Court be pleased to stay the further investigation of DCB Police

Station, Surat City bearing 1st C.R. No. 37/2013 for the alleged offences under Section 213, 214, 217 and 120(B) of IPC read with Section 7, 8,

9, 12, 13(1) of Prevention of Corruption Act and/or arising out of charge sheet dated 9/2/2014 until further order;

(C) Pending hearing and final disposal of the present application, this Hon''ble Court be pleased to stay the further proceeding in relation to charge-

sheet dated 9/2/2014 filed in the court of Hon''ble Special Judge, Surat City.

(D) Pending hearing and final disposal of the present application, this Hon''ble Court be pleased to direct the investigation officer of DCB Police

Station 1st C.R. No. 37/2013 Surat City not to call and arrest the present applicant.

(E) Any other/further reliefs which deem fit be granted in favour of present applicant.

4. The Criminal Misc. Application No. 3007 of 2014 was filed by the applicant herein substantially on the ground that without any basis the

applicant was shown as an absconding accused in the charge-sheet filed against other co-accused, more particularly when in the statements

recorded of the various witnesses there is no reference of the role of the applicant herein.

5. It appears that on 26th February, 2014 a Coordinate Bench passed the following order:

It is contended that except bare statement in the chargesheet unsupported by the evidence of witnesses, no allegations is made against the

petitioners. It is argued that under such circumstances the petitioner should not be exposed to trial as that would be abuse of process of law.

Hence by ad interim order it is directed that in absence of any material against the petitioner in connection with the present case and unless found

absolutely necessary, the petitioner would not be arrested.

Direct service is permitted.

6. It also appears from the materials on record that the State of Gujarat filed Criminal Misc. Application No. 10887/2014 in Criminal Misc.

Application No. 3007/2014 praying for vacating the interim order passed by a coordinate Bench dated 26th February, 2014 referred to above.

The said application filed by the State of Gujarat was ordered to be notified for final disposal along with the Special Criminal Application No.

3898/2014 filed by the applicant herein.

7. I may now give a fair idea about the Special Criminal Application No. 3898/2014.

7.1 It appears that pending the Criminal Misc. Application No. 3007/2014 the applicant herein came to be arrested and thereafter was remanded

to judicial custody and since then is in judicial custody. The Special Criminal Application No. 3898/2014 was filed by the applicant herein

substantially on the ground that despite there being an interim order passed earlier by this Court, the Police arrested him without any cogent

grounds for arrest. The applicant has prayed for the following reliefs:

A) This Hon''ble Court be pleased to admit the petition.

B) This Hon''ble Court be pleased to hold and declare that the arrest of the petitioner by respondent No. 2 dated 15/9/2014 in relation to DCB

Police Station, Surat City bearing 1st C.R. No. 37/2013 is illegal, contrary to law;

C) This Hon''ble Court be pleased to quash and set aside the production report of petitioner dated 16/9/2014 submitted by respondent No. 2 in

the court of Hon''ble District Court, Surat in relation to DCB Police Station, Surat City bearing 1st C.R. No. 37/2013 and order passed thereon

the Hon''ble District Court, Surat;

D) Pending hearing and final disposal of the present petition, this Hon''ble Court be pleased to direct the Hon''ble District Court, Surat to set free

the petitioner in relation to DCB Police Station, Surat City bearing 1st C.R. No. 37/2013.

E) This Hon''ble Court be pleased to direct the Government to initiate the departmental proceedings against the respondent No. 2 for not obeying

the directions of judgment of Hon''ble Apex Court reported in Arnesh Kumar Vs. State of Bihar, ;

F) Any other/further reliefs which deem fit be granted in favour of present petitioner.

8. Thus from the above, the picture is clear. The applicant first challenged the action on the part of the investigating agency in citing him as an

absconding accused in the charge-sheet filed against other co-accused and in the second petition filed by him, he seeks to challenge the legality and

validity of his arrest and the order of remand to judicial custody passed by the Principal District and Sessions Judge, Surat.

9. Submissions on behalf of the applicant:

9.1 Mr. I.H. Syed, the learned counsel appearing for the applicant vehemently submitted that the investigating agency has acted in a very high-

handed manner in the present case and for no fault on the part of his client he is being harassed. Mr. Syed submits that although there is not an iota

of material against the applicant herein yet he was shown as an absconding accused in the charge-sheet filed so far as the other co-accused are

concerned and not only that but despite there being a specific order passed by the learned Single Judge of this Court dated 26th February, 2014

protecting the applicant from arrest the police arrested the applicant at the time when he appeared for the purpose of interrogation pursuant to a

summons served upon him under Sec. 160 of the Cr.P.C.

9.2 The main plank of Mr. Syed''s submission is based on the recent pronouncement of the Supreme Court in the case of Arnesh Kumar Vs. State

of Bihar, wherein the Supreme Court has taken the view that the police should not effect arrest mechanically and automatically. The Supreme

Court has taken the view that before effecting arrest the Police Officer should record his satisfaction in writing that such arrest is necessary to

prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the

evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement,

threat or promise to a witness; or unless such accused person is arrested, his presence in the Court whenever required cannot be ensured. The

Supreme Court has further observed that the Magistrate before authorizing detention shall record his own satisfaction, may be in brief but, such

satisfaction must reflect from his order.

9.3 Mr. Syed vehemently submitted that contrary to the principles and guidelines laid down by the Supreme Court in the case of Arnesh Kumar

(supra) the applicant was arrested and the learned Judge before whom he was produced and remanded to judicial custody also failed to consider

the decision of the Supreme Court referred to above in its true perspective.

9.4 Mr. Syed submits that if the arrest itself is illegal then the detention of the applicant as on today could also be termed as unlawful thereby

violating Article-22 of the Constitution of India.

9.5 Mr. Syed submits that in the present case the applicant was arrested on 16th September, 2014 by the Asst. Police Commissioner, "D"

Division, Surat City and was produced before the Special Judge, Surat on the very same date at 16.45 hours. Mr. Syed submits that the applicant

had even lodged his objections in writing before the Special Judge against the production report filed by the Assistant Police Commissioner, D-

Divn., Surat City. However, the learned Special Judge overruled the objections raised by the applicant and ultimately ordered the applicant to be

taken in judicial custody.

In such circumstances referred to above Mr. Syed, the learned counsel appearing for the applicant submitted that the two petitions filed by the

applicant merits consideration and the same be allowed. Mr. Syed prays that the applicant be ordered to be released forthwith by holding that his

detention as on today is unlawful.

10. Submissions on behalf of the State:

10.1 Mr. P.K. Jani, the learned Additional Advocate General appearing for the State has vehemently opposed the two applications filed by the

applicant. Mr. Jani submits that no error of law, not to speak of any error of law, could be said to have been committed by the learned Special

Judge, in overruling the objections raised by the applicant so far as his production was concerned and remand to judicial custody.

10.2 Mr. Jani submits that the decision of the Supreme Court in the case of Arnesh Kumar (Supra) was followed in its letter and spirit and the

submissions canvassed on behalf of the applicant that the decision of the Supreme Court in Arnesh Kumar (Supra) has not been followed, is

without any merit and deserves to be outright rejected. Mr. Jani submits that the applicant is one of the co-accused of a very serious offence. He is

accused of being one of the co-conspirators of the conspiracy which was hatched for the purpose of bribing the Police Officers. He submits that a

huge amount of Rs. 4.00 crore was to be paid to the police officers for the purpose of taking back the 42 bags containing various documents of

various Ashrams. Mr. Jani submits that there are sufficient materials collected in the course of investigation to point a finger towards the applicant

so far as his complicity is concerned. Mr. Jani submitted that at the time of production of the applicant before the learned Special Judge, the

Assistant Police Commissioner, D-Divn. Surat City had submitted a checklist wherein it has been stated that for the effective investigation of the

crime the arrest of the applicant was necessary and not only that but the applicant was also likely to tamper with the evidence. Mr. Jani submits

that the learned Special Judge by a reasoned order accepted the report of the Assistant Police Commissioner, D-Division, Surat City and rightly

overruled the objections raised by the applicant.

In such circumstances referred to above Mr. Jani prays that there being no merit in both the matters filed by the applicant, they deserve to be

rejected.

11. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my

consideration is whether the arrest of the accused applicant was in accordance with law.

12. Before adverting to the rival submissions canvassed on either sides, I should first look into the decision of the Supreme Court in the case of

Arnesh Kumar (supra). Paragraphs 6 to 16 are reproduced below:--

6. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law

makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.P.C. 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 emphasized time and again by 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.

7. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between

individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to

do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only

because the offence is non-bailable and cognizable and therefore, lawful for the Police Officers to do so. The existence of the power to arrest is

one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the Police Officers must be able to justify the reasons

thereof. No arrest can be made in a routine manner on a mere allegation of commission of an -offence made against a person. It would be prudent

and wise for a Police Officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the

allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the

Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the

Code of Criminal Procedure (for short "Cr.P.C.), in the present form came to be enacted. It is interesting to note that such a recommendation was

made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the

amendment relating to arrest. As the offence with which we are concerned in the present appeal, provides for a maximum punishment of

imprisonment which may extend to seven years and fine, Section 41(1)(b), Cr.P.C. which is relevant for the purpose reads as follows:

41. When police may arrest without warrant.--(1) Any Police Officer may without an order from a Magistrate and without a warrant, arrest any

person--

(a) xxx xxx xxx

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has

committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years

whether with or without fine, if the following conditions are satisfied, namely:--

(i) xxx xxx xxx

(ii) the Police Officer is satisfied that such arrest is necessary--

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

(b) for proper investigation of the offence; or

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

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

him from disclosing such facts to the Court or to the Police Officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot he ensured, and the Police Officer shall record while

making such arrest, his reasons in writing:

8. Provided that a Police Officer shall, in all cases where the arrest of a person is not required under the provisions of this Sub-Section, record the

reasons in writing for not making the arrest.

X xxx xxx xxx

9. From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which

may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the Police Officer only on its

satisfaction that such person had committed the offence punishable as aforesaid. Police Officer before arrest, in such cases has to be further

satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to

prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such

person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the Police

Officer; or unless such accused person is arrested, his presence in the Court whenever required cannot be ensured. These are the conclusions,

which one may reach based on facts. Law mandates the Police Officer to state the facts and record the reasons in writing which led him to come to

a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the Police Officers to record the reasons in

writing for not making the arrest. In pith and core, the police office before arrest must put a question to himself, why arrest? Is it really required?

What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as

enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the Police Officers should have reason to

believe on the basis of information and material that the accused has committed the offence. Apart from this, the Police Officer has to be satisfied

further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (c) of clause (1) of Section 41 of Cr.P.C..

10. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57.

Cr.P.C. to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary

for the journey. During the course of Investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is

authorised by the Magistrate in exercise of power under Section 167 Cr.P.C.. The power to authorise detention is a very solemn function. It

affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with

the seriousness it deserves, in many of the cases, detention is authorised in a routine, casual and cavalier manner. Before a Magistrate authorizes

detention under Section 167. Cr.P.C., he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional

rights of the person arrested is satisfied. If the arrest effected by the Police Officer does not satisfy the requirements of Section 41 of the Code.

Magistrate is duty bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the

Magistrate, the Police Officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the

Magistrate in turn is to be satisfied that condition precedent for arrest under Section 41 Cr.P.C. has been satisfied and it is only thereafter that he

will authorise the detention of an accused. The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said

satisfaction must reflect from its order. It shall never be based upon the ipse dixit of the Police Officer, for example, in case the Police Officer

considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing

an accused from tampering with evidence or making inducement etc., the Police Officer shall furnish to the Magistrate the facts, the reasons and

materials on the basis of which the Police Officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the

detention and only after recording its satisfaction in writing that the Magistrate will authorise the detention of the accused. In fine, when a suspect is

arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have

been recorded for arrest and if so, prima facie those reasons are relevant and secondly a reasonable conclusion could at all be reached by the

Police Officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

11. Another provision i.e. Section 41A Cr.P.C. aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be

vitalised. Section 41A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act. 2008 (Act 5 of 2009). which is relevant in

the context reads as follows;

41 A. Notice of appearance before a Police Officer.--(1) The Police Officer shall, in all cases where the arrest of a person is not required under

the provisions of Sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or

credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at

such other place as may be specified in the notice.

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

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice

unless, for reasons to be recorded, the Police Officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the Police Officer may, subject to

such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

12. Aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1), Cr.P.C., the Police Officer

is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before

the Police Officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be

recorded, the police office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under

Section 41 Cr.P.C. has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

13. We are of the opinion that if the provisions of Section 41, Cr.P.C. which authorizes the Police Officer to arrest an accused without an order

from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the Police Officers intentionally or unwittingly would

be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise

that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.P.C. for effecting arrest be

discouraged and discontinued. Our endeavour in this judgment is to ensure that Police Officers do not arrest accused unnecessarily and Magistrate

do not authorize detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:--

(1) All the State Governments to instruct its Police Officers not to automatically arrest when a case under Section 498-A of the IPC is registered

but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.P.C.;

(2) All Police Officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

(3) The Police Officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while

forwarding/producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the Police Officer in terms aforesaid and only

after recording its satisfaction, the Magistrate will authorize detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy

to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Cr.P.C. 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 the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the Police Officers concerned liable for departmental action, they shall

also be liable to be punished for contempt of Court to be instituted before High Court having territorial jurisdiction.

(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the

appropriate High Court.

14. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry

Prohibition Act. the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years

or which may extend to seven years; whether with or without fine.

15. We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State

Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance.

16. By order dated 31st of October, 2013, this Court had granted provisional bail to the appellant on certain conditions. We make this order

absolute in the result, we allow this appeal, making our aforesaid order dated 31st October, 2013 absolute; with the directions aforesaid.

13. The decision of the Supreme Court lays down a proposition of law that the existence of the power of the police to arrest is one thing, the

justification for the exercise of it is quite another. No arrest should be made in a routine manner on a mere allegation of commission of an offence

made against a person. The Supreme Court was dealing with a matter wherein the petitioner or husband was apprehending his arrest in a case

under Sec. 498-A of the Indian Penal Code and Sec. 4 of the Dowry Prohibition Act, 1961. The Supreme Court took cognizance of the fact that

there had been a phenomenal increase in the matrimonial disputes in the recent years. The Supreme Court took notice of the fact that the simplest

way to harass in matrimonial matters was to get the husband and his relatives arrested under Sec. 498-A of the IPC. It is in the aforesaid

background that the Supreme Court thought fit to explain the correct position of law so far as the powers of the police to arrest is concerned and

over and above that also issued various directions. The Supreme Court in para-15 of the judgment also observed that the directions which were

issued would not only apply to the cases under Section 498-A of the IPC or Sec. 4 of the Dowry Prohibition Act, but also to such cases where

the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to 7 years; whether with or

without fine.

14. I may now look into the procedure which was adopted in the present case so far as the arrest of the applicant is concerned. It appears from

the materials on record that the applicant was served with a summons under Sec. 160 of the Code for the purpose of recording his statement and

after recording the statement the Investigating Officer was convinced as regards the complicity of the applicant in the alleged offence and,

therefore, thought fit to arrest him. It appears from the endorsement of the learned Special Judge, Surat that the applicant was produced in the

Court on 16th September, 2014 at 16.45 hours. It also appears that at the time of the production of the applicant before the learned Special Judge

a checklist duly prepared and signed by the Assistant Police Commissioner, D-Divn., Surat City as envisaged under Sec. 41(1)(b)(ii) of the Code

was placed before the learned Special Judge wherein it has been stated that the arrest of the applicant was necessary for the following reasons:

i) for effective investigation of the offence;

ii) there was a possibility that the accused might tamper with the prosecution evidence;

iii) there was a possibility that the applicant would tamper with the prosecution witnesses by threatening them or by luring them in some manner or

the other.

iv) an apprehension was expressed that the applicant might not remain present before the Court on dates fixed by the court for the hearing of the

matter.

15. As noted above, the applicant also filed his objections against the production report wherein his main objection was that the Investigating

Officer had committed contempt of the High Court''s order dated 26th February, 2014 by which the High Court had directed that in absence of

any material against the applicant and unless it was found absolutely necessary, the petitioner shall not be arrested.

16. The learned Special Judge after taking into consideration the checklist provided by the Investigating Officer and the objections which were

raised in writing by the applicant passed an order on the very same day i.e. on 16th September, 2014 ordering remand of the applicant to the

judicial custody.

17. The learned Special Judge made the following observations which I may quote below:

(7) Having considered the facts of the case, the submissions made by the learned advocates of the either side and the documents produced on

record, it appears that, one Cri. Misc. Application No. 3007/2014 was preferred by the present accused under Sec. 482 of the Code of Criminal

Procedure to quash and set aside the FIR filed at DCB Police Station vide I C.R. No. 37/2013 for the offences referred to above. The Hon''ble

High Court of Gujarat was pleased to pass an ad interim order dated 26th February, 2014, directing that, in absence of any material against the

petitioner in connection with the present case, and unless found absolutely necessary, the petitioner would not be arrested. It also appears that, in

the said Cri. Misc. Application, the State of Gujarat also preferred one Cri. Misc. Application No. 10887/2014 raising number of grounds praying

to vacate the stay granted for staying investigation by the Hon''ble High Court of Gujarat or fix up the matter being Cri. Misc. Application No.

3007/2014 for final hearing. It is undisputed that, both the said Cri. Misc. Applications bearing Nos. 3007/2014 and 10887/2014 are pending

before the Hon''ble High Court of Gujarat for final hearing. This is not the stage of ascertain absolute necessity of arresting the accused, because

the process of arresting the accused by the Investigating Officer is completed and he is already arrested on 15th September, 2014 from

Chandkheda Police Station, Ahmedabad, as stated in the report submitted by the Investigating Officer. It is true that Hon''ble High Court of

Gujarat was pleased to restrain the Investigating Agency from arresting the accused unless found absolutely necessary. The case of Arnesh Kumar

v. State of Bihar in Criminal Appeal No. 1277/2014 before the Hon''ble Supreme Court was in connection with anticipatory bail, as the accused

was involved in a case under Sec. 498-A of Indian Penal Code, 1860 and Sec. 4 of Dowry Prohibition Act, 1961. The Hon''ble Supreme Court

was pleased to settle the principle that, in all cases where the arrest of the person is not required under Sec. 41(1) Cr.P.C., the police officer is

required to issue notice directing the accused to appear before him in a specific time. The law obliges such accused to appear before the officer,

and it further mandates that, if such an accused complies with the terms of notice, he shall not be arrested, unless for reasons to be recorded by the

police officer if he is of the opinion that arrest is necessary. The condition precedent for arrest is envisaged under Sec. 41 of the Code of Criminal

Procedure has to be complied and shall be subject to the same scrutiny by the Magistrate. Sec. 41 of the Code of Criminal Procedure authorizes

police agency, without an order from the Magistrate, and without a warrant, to arrest any person, (A xxx) against whom a reasonable complaint

has been made or credible information has been received, or reasonable suspicion exist that he has committed a cognizable offence punishable with

imprisonment for a term which may be less than Seven (7) years or which may extent to Seven (7) years whether with or without fine, if the

conditions are satisfied, imposed therein. This would not be a stage by this court asserting absolute necessity of arresting the accused without a

warrant, prayed before the learned 6th Addl. Sessions Judge, Surat, and rejecting the prayer by the court. Further, question of initiating contempt

proceedings against the Investigating Officer does not arise while deciding the prayer of the prosecution taking him into judicial custody, and hence,

the said prayer cannot be accepted. Under Sec. 57 Cr.P.C., no police officer shall detain in custody a person arrested without warrant for a longer

period than under all the circumstances of the case, is reasonable, and such period shall not, in absence of a special order of a Magistrate under

Sec. 167, exceeds twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate"s court.

18. In my view the learned Special Judge did take into consideration all the relevant aspects before accepting the production of the applicant-

accused and remanding him to judicial custody. Although the reasoning assigned by the learned Special Judge may not be that appealing, yet the

final decision taken by the learned Special Judge was quite correct. I am not impressed by the submissions of Mr. Syed, the learned Advocate

appearing on behalf of the applicant-accused that the proposition of law laid down by the Supreme Court in the case of Arnesh Kumar (Supra)

had not been considered. As noted above, in the checklist reasons have been assigned justifying the arrest of the accused. The reasons may not be

that elaborate. However, the sum and substance should be reflected from the same so as to consider the satisfaction arrived at by the Police

Officer to justify the arrest. The Special Judge before authorizing detention has recorded his own satisfaction and such satisfaction is reflected from

its order taking into consideration the magnitude of the crime alleged to have been committed. The reasons assigned by the Investigating Officer

could be said to be quite cogent and justifiable and in my view the learned Special Judge has rightly considered the same.

19. In my view, the petitioner is not entitled to the declaration that his arrest by the respondent No. 2 dated 15th September, 2014 was illegal and

contrary to law.

20. The above takes me to consider the plea for quashing of the FIR i.e. C.R No. I-37/13, registered with the DCB Police Station, Surat City. It

appears from the materials on record that after the arrest of the petitioner, charge-sheet came to be filed against him also. If it is the case of the

petitioner that there is no case worth the name to prosecute him, then it shall be open for the petitioner to file an appropriate application for

discharge before the trial Court, and if such an application is filed, the same be considered and decided in accordance with law. I do not propose

to go into the issue of sufficiency or insufficiency of the materials against the petitioner. Any observation at my end at this stage may cause prejudice

to the petitioner as well as to the prosecution. In that view of the matter, the Criminal Misc. Application No. 3007 of 2014 also should fail.

21. In the result, the Criminal Misc. Application No. 3007 of 2014 is disposed of accordingly, whereas the Special Criminal Application No. 3898

of 2014 is rejected.

22. In view of the above, connected Criminal Misc. Application No. 10887 of 2014 filed by the State praying for vacating of the interim relief has

become infructuous and the same is also accordingly disposed of.