IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19th DAY OF JANUARY, 2023

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.24832 OF 2022 (GM - POLICE)

BETWEEN:

MR.KULDEEP
ADVOCATE
AGED ABOUT 23 YEARS
S/O CHANDRASHEKHAR SHETTY
RESIDING AT PUTHILA VILLAGE
BELTHANGADY TALUK
D.K.DISTRICT.

... PETITIONER

(BY SRI P.P.HEGDE, SR.ADVOCATE FOR
SRI GANAPATHI BHAT, ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
MINISTRY OF HOME AFFAIRS
AMBEDKAR VEEDHI
BENGALURU – 560 001
BY SECRETARY.

2 . THE STATE OF KARNATAKA
BY STATION HOUSE OFFICER
PUNJALKATTE POLICE STATION

REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA AT
BENGLAURU – 560 001.

3 . THE SUPERINTENDENT OF POLICE
DAKSHINA KANNADA DISTRICT – 575 001.

4 . SUTHESH K.P.,
SUB-INSPECTOR OF POLICE
PUNJALKATTE POLICE STATION
D.K. DISTRICT – 575 001.

... RESPONDENTS

(BY SRI M.VINOD KUMAR, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECTIONS TO THE STATE OF KARNATAKA / RESPONDENT NO. 1 AND 3 TO REGISTER FIR AGAINST THE RESPONDENT NO. 4 FOR THE OFFENSES UNDER THE INDIAN PENAL CODE AND OTHER ENACTMENT FOR INDULGING IN COMMITTING WRONGFUL CONFINEMENT, ASSAULT AND OTHER OFFENSES AGAINST THE PETITIONER AS DETAILED IN THE COMPLAINT SUBMITTED BY THE PETITIONER VIDE ANNEXURE-J AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 10.01.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

"*When the State or its agents fear the people there is* LIBERTY*; when the people fear the State or its agents, there is* TYRANNY*".*

The petitioner, a young advocate laments that his personal liberty is torn into smithereens by a few, megalomaniac and mayhem happy, police personnel in an act of outrage of his human rights.

2. The facts adumbrated are as follows:

The petitioner, a young boy of 23 years, an Advocate, too young to the bar, having enrolled on 02-11-2022 to the Karnataka State Bar Council claims to be practicing in all Courts of the city at Mangaluru. The narration of the story is that, the petitioner owns certain agricultural property, it abuts an agricultural property of Mrs. Bhavani and K.Vasantha Gowda, her husband. It is averred that K.Vasantha Gowda started obstructing the petitioner of his

right to use the road leading to his agricultural property and was attempting to erect a permanent gate with an intention to prevent the petitioner and his family from making use of the road that led to his agricultural property. This constrains the petitioner to approach the Court of the Principal Civil Judge and JMFC, Bantwal in O.S.No.391 of 2022. The Court entertaining the suit grants temporary injunction against K.Vasantha Gowda, in terms of its order dated 01-12-2022. The petitioner after securing certified copy of the temporary injunction order communicates it to the Sub-Inspector of Police, Punjalakatte Police Station on 02-12-2022 to take action to protect his property, in terms of the interim order so granted by the civil Court. It is alleged that there was no action taken by the Police.

3. It transpires that the Police closed the complaint against K. Vasantha Gowda holding it to be a land dispute on 02-12-2022, on the same day. Immediately after closure of the said complaint, Mrs. Bhavani registers a complaint against the petitioner at 8.15 p.m. on 02-12-2022. The crime is registered against the petitioner on the complaint made by Mrs. Bhavani for offences punishable

under Sections 447 and 379 of the IPC. Therefore, Mrs. Bhavani is the complainant. Even before the FIR could be registered on her complaint, it is alleged that on 02.12.2022 the 4th respondent/Sub-Inspector of Police enters the house of the petitioner at 8.00 p.m. and in spite of resistance of the mother of the petitioner, the Police caught hold of the neck of the petitioner, drag him, boot him and take him to the Police Station and later register a FIR against the petitioner at 8.15 p.m., on the complaint of Mrs. Bhavani, W/o.K. Vasantha Gowda. The incident narrated in the complaint is that the petitioner has attempted to take away the gate that Mrs. Bhavani wanted to erect. Therefore, the offences under Sections 447 and 379 of the IPC were laid against the petitioner in Crime No.94 of 2022. It is the allegation that petitioner's personal liberty was taken away completely contrary to law.

4. After the arrest, the petitioner applies for interim bail before the concerned Court. The Court records the ill-treatment meted out during arrest of the petitioner by the 4th respondent and assault on the petitioner during the arrest in his house and also observed that intimation to be sent to higher authorities to take

action against the Police Officer for violation of personal liberty of the petitioner and grants interim bail. Immediately on release of the petitioner on interim bail, he files a complaint before the Punjalakatte Police Station against the 4th respondent and other officers who have manhandled him narrating entire circumstances. Though the complaint was filed before the Police on 09-12-2022, the crime was not registered. This led the petitioner to knock at the doors of this Court in the subject petition. This Court, in terms of its order dated 13-12-2022, directed the learned Additional Government Advocate to seek instructions as to what has become of the complaint registered by the petitioner against the 4th respondent and place investigation papers on record. Even then, the FIR on the complaint of the petitioner was not registered. The matter was listed on 04-01-2023. The State sought a day's time to seek instructions. It is then on the evening of 04-01-2023 the crime comes to be registered against the 4th respondent and others who were involved in the incident of alleged assault against the petitioner. The afore-narrated forms the skeleton of the case at hand.

5. Heard Sri P.P.Hegde, learned senior counsel appearing for the petitioner and Sri Vinod Kumar.M., learned Additional Government Advocate representing the respondents.

6. The learned senior counsel Sri P.P.Hegde, appearing for the petitioner would with vehemence urge the following contentions:

a. *The alleged complaint against the petitioner was for offences punishable under Sections 379 and 447 of the IPC, both of which are not punishable with imprisonment beyond 3 years. Therefore, the arrest of the petitioner is contrary to law and the guidelines laid down by the Apex Court in the case of* ***ARNESH KUMAR v. STATE OF BIHAR – (2014) 8 SCC 273;***

b. *In terms of the guidelines so laid down in the case of* ***ARNESH KUMAR****, if the allegations involve offences punishable with less than 7 years of imprisonment, arrest at the outset except in exceptional cases, is not warranted. A notice under Section 41A of the Cr.P.C. is to be issued and then arrest if necessary;*

c. *It is his emphatic submission that the petitioner was dragged from the house without allowing him to even wear his shirt as he was in his vest, dragged into the jeep. The mother who objected was pushed and the petitioner beaten throughout. Taking away of the liberty of the petitioner was without even a warrant of arrest, as the crime was yet to be registered;*

d. *The petitioner in the police station was threatened, booted and made to write a confession statement that he has himself stolen the gate and on false pretext had registered the suit against Mrs.Bhavani;*

e. *Statement of the petitioner was recorded in the hospital when he was in an injured state, but no crime was registered against the 4th respondent or any other person;*

f. *The complaint registered by the petitioner after securing interim bail remained a complaint, as no crime was registered;*

g. *For all the aforesaid acts of the police, the petitioner is entitled to be compensated from the hands of the State and a direction for stringent action against the 4th respondent and other involved.*

7. On the other hand, the learned Additional Government Advocate representing all the respondents would seek to put up vehement defense by the following submissions:

a. *The police have only performed their duty, as Hoysala police had been given a call at 6.15 p.m. by Mrs.Bhavani that there was some altercations in the property between the petitioner and the said complainant and therefore, the police had only gone to enquire;*

b. *On certain occasions, though exceptional, arrest can be made by the police. This was one such exception;*

c. *He would submit that the beating of the petitioner is only imaginary, nothing of that sort has happened;*

d. *Petitioner has himself given a statement that he is guilty of the offences;*

e. *He would submit since the crime is now registered, apart from departmental enquiry, no further action need be taken against the 4th respondent or others at the hands of this Court.* He would seek dismissal of the petition.

8. I have given my anxious consideration to the submissions made by the respective learned counsel, perused the material on record and the investigation papers placed before the Court.

UNFURLING OF FACTS:

9. Though the facts are briefly narrated hereinabove, they would require iteration in a little more detail. A young boy, aged 23 years, a young Advocate too, has a problem with his neighbour, nothing concerning his profession. The petitioner claims to be owning certain agricultural property. One Mrs.Bhavani and Sri.K.Vasantha Gowda, her husband also own an agricultural property. The properties abut each other. These neighbours of such agricultural properties have a dispute with regard to the entry to their properties, the pathway. The allegation of the petitioner is that the neighbour is wanting to put up a gate which permanently blocks the way for the petitioner to enter his property. Despite requests, it is the claim of the petitioner that the neighbour did not budge.

10. On the aforesaid grievance of his entry to the agricultural land being blocked, the petitioner knocks at the doors of the jurisdictional Civil Court in O.S.No.391 of 2022 seeking relief of permanent injunction against K. Vasantha Gowda. The civil Court grants an *ex-parte* temporary injunction restraining the defendant and his men from interfering with the use of road by the petitioner to reach his land. The next date of hearing was on 04-01-2023. The order of temporary injunction reads as follows:

> *"Issue ex-parte temporary injunction restraining the defendant or his men, servants or anybody claiming through them and on their behalf restraining them from blocking the roadway which proceeds from Kakkeadav Vagga road to Devasya Mudur mud road cunning in the B Schedule to reach plaint A schedule land till next date of hearing. Plaintiff to comply with O 39 R 3 of CPC on compliance. Issue TI order and issue notice on IA No.II to the defendant and suit summons to the defendant.*
>
> *APPEARANCE*
> ***04-01-2023."***

On the strength of temporary injunction granted in the suit filed for permanent injunction, the petitioner seeks to register a complaint against K.Vasantha Gowda. The complaint reads as follows:

> *"ಕುಲದೀಪ್*
> *ಬಿನ್ ಚಂದ್ರಶೇಖರ ಶೆಟ್ಟಿ*
> *ಬರಮೇಲು ಮನೆ*
> *ಪುತ್ತಿಲ ಗ್ರಾಮ ಮತ್ತು ಅಂಚೆ*

ಬೆಳ್ತಂಗಡಿ ತಾಲೂಕು
ಮೊ.8660310516 *ಅರ್ಜಿದಾರ*

ಮತ್ತು

ಕೆ.ವಸಂತ ಗೌಡ
ಬಿನ್ ವೆಂಕಪ್ಪ ಗೌಡ
ಹಳೆಗೇಟು ಮನೆ
ನಾವೂರು ಗ್ರಾಮ ಮತ್ತು ಅಂಚೆ
ಬಂಟ್ವಾಳ ತಾಲೂಕು
ಮೊ.9902177185 *ಎದ್ರಿ*

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಬಂಟ್ವಾಳ ತಾಲೂಕು ದೇವಸ್ಯಮೂಡೂರು ಗ್ರಾಮದ ಸ.ನಂ.2–16 ಮತ್ತು 2–18 ರ ಸ್ಥಳಕ್ಕೆ ಬರುವ ರಸ್ತೆಯನ್ನು ನಮ್ಮ ನೆರೆಯ ಜಮೀನಿನವರಾದ ಕೆ.ವಸಂತ ಗೌಡ ಎಂಬವರು ಗೇಟು ಹಾಕಲು ಪ್ರಯತ್ನಿಸುತ್ತಿರುವ ಬಗ್ಗೆ.

ದಿನಾಂಕ 01–12–2022ರಂದು ಸಿವಿಲ್ ನ್ಯಾಯಾಧೀಶರು ಮತ್ತು ಜೆ ಎಂ ಎಫ್ ಸಿ ಬಂಟ್ವಾಳ ನ್ಯಾಯಾಲಯವು ಕೆ.ವಸಂತ ಗೌಡ ಎಂಬವರ ಮೇಲೆ ಪ್ರಕರಣ ಸಂಖ್ಯೆ ಒ.ಎಸ್.391/2022 ರಲ್ಲಿ ತಾತ್ಕಾಲಿಕ ತಡೆಯಾಜ್ಞೆಯನ್ನು ನೀಡಿರುತ್ತಾರೆ. ನಮ್ಮ ಕೃಷಿ ಭೂಮಿಯು ದೇವಸ್ಯಮೂಡೂರು ಗ್ರಾಮದ ಸ.ನಂ.2–16 ಮತ್ತು 2–18ರಲ್ಲಿ ಇದ್ದು ಇದಕ್ಕೆ ಬರುವ 12 ಫೀಟು ಅಗಲದ ರಸ್ತೆಯನ್ನು ಗೇಟು ಹಾಕಿ ಮುಚ್ಚಲು ಎದ್ರಿ ಪ್ರಯತ್ನಿಸುತ್ತಿದ್ದಾರೆ. ಮತ್ತು ಅದೇ ವ್ಯಕ್ತಿಯು ಈ ಹಿಂದೆಯೂ ಒಂದು ಬಾರಿ ಬೇಲಿಯನ್ನು ಹಾಕಿದ್ದು ಅದನ್ನು ನಾವು ತೆರವುಗೊಳಿಸಿರುತ್ತೇವೆ. ಆದರೆ ಈ ವ್ಯಕ್ತಿಯು ಪದೇ ಪದೇ ಕಾನೂನಿನ ನಿಯಮವನ್ನು ಉಲ್ಲಂಘಿಸಲು ಪ್ರಯತ್ನಿಸುತ್ತಾರೆ.

ಆದುದರಿಂದ ತಾವುಗಳು ಇದಕ್ಕೆ ಸೂಕ್ತವಾದ ಕ್ರಮವನ್ನು ಕೈಗೊಳ್ಳುವಂತೆ ನಾವು ವಿನಂತಿಸಿಕೊಳ್ಳುತ್ತೇವೆ.

ಸ್ಥಳ: ದೇವಸ್ಯಮೂಡೂರು
ದಿನಾಂಕ :2–12–2022"

(Emphasis added)

The petitioner brings it to the notice of Punjalakatte Police Station that civil Court has granted temporary injunction but K.Vasantha Gowda is attempting to interfere with the possession notwithstanding the order of temporary injunction being brought to his notice on the very day i.e., 02.12.2022. The Police enquire and

close the complaint, on the ground it is a land dispute between the two. Immediately after closure of the complaint of the petitioner, Mrs. Bhavani, wife of K.Vasantha Gowda, the neighbour, on the very day i.e., 02-12-2012 seeks to register allegations against the petitioner. It is the submission of the learned Additional Government Advocate, on instructions, that Hoysala police were informed about some altercation between the petitioner and the neighbour. The learned Additional Government Advocate would further submit that the Hoysala police had to go to the spot, but did not find anything and did not enquire with anybody. The records, reveal that at 8.00 p.m., the 4th respondent and his cohorts barge into the house of the petitioner, drag him out of the house and put him into the jeep. The allegation is that the petitioner was beaten inside the jeep, his mother was pushed when she wanted to object the petitioner being taken away by the police. The police neither had a warrant of arrest nor an FIR against the petitioner. The petitioner was brought to the police station and a crime comes to be registered on the complaint of Mrs.Bhavani, W/o K.Vasantha Gowda at 8.15 p.m., 15 months after the incident. The complaint so registered by Mrs.Bhavani reads as follows:

ಇಂದ,

ಭವಾನಿ (38 ವರ್ಷ)
ಗಂಡ: ವಸಂತ ಗೌಡ
ಹಳೆಗೇಟು ಮನೆ, ನಾವೂರು ಗ್ರಾಮ ಮತ್ತು ಅಂಚೆ
ಬಂಟ್ವಾಳ ತಾಲೂಕು, ಮೊ:8951197185

ರಿಗೆ,

ಠಾಣಾಧಿಕಾರಿಯವರು
ಪುಂಜಾಲಕಟ್ಟೆ ಪೊಲೀಸ್ ಠಾಣೆ.

ಮಾನ್ಯರೇ,

ವಿಷಯ: ನಮ್ಮ ಜಮೀನಿಗೆ ಹಾಕಿದ್ದ ಕಬ್ಬಿಣದ ಗೇಟನ್ನು ಕಳವು ಮಾಡಿರುವ ಬಗ್ಗೆ ದೂರು.

ನಾನು ಮೇಲ್ಕಾಣಿಸಿದ ವಿಳಾಸದಲ್ಲಿ ಸಂಸಾರದೊಂದಿಗೆ ವಾಸವಾಗಿದ್ದು ಕೃಷಿ ಕೆಲಸ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ. ನಾನು ಸುಮಾರು 7 ವರ್ಷಗಳ ಹಿಂದೆ ಬಂಟ್ವಾಳ ತಾಲೂಕು, ದೇವಸ್ಯಮೂಡೂರು ಗ್ರಾಮದ, ಪೊಸಲಾಯಿ ಎಂಬಲ್ಲಿ ಶಿವಪ್ಪ ನಾಯ್ಕ್ ಎಂಬವರಿಂದ ಸರ್ವೆ ನಂಬ್ರ 2–1 ರಲ್ಲಿನ 77 ಸೆಂಟ್ಸ್ ಪಟ್ಟಾ ಜಮೀನನ್ನು ಖರೀಧಿಸಿರುತ್ತೇನೆ. ಈ ಜಮೀನಿನಲ್ಲಿ ನಾವು ಅಡಿಕೆ ಕೃಷಿ ಮಾಡಿಕೊಂಡಿರುತ್ತೇವೆ. ನಾವು ದಿನಾ ಈ ತೋಟಕ್ಕೆ ಬಂದು ಕೆಲಸ ಮಾಡಿ ವಾಪಾಸು ಮನೆಗೆ ಹೋಗುತ್ತಿರುತ್ತೇವೆ. ತೋಟದ ಕೆಲಸಕ್ಕೆ ಧರ್ಣಪ್ಪ ಎಂಬವರು ದಿನಾ ಕೆಲಸಕ್ಕೆ ಬರುತ್ತಿರುತ್ತಾರೆ. ತೋಟದಲ್ಲಿ ಅಡಿಕೆ ಫಸಲು ಬರುತ್ತಿರುವುದರಿಂದ ಎರಡು ವರ್ಷದ ಹಿಂದೆ ನಾವು ನಮ್ಮ ಜಮೀನಿಗೆ ಬೇರೆಯವರು ಅತಿಕ್ರಮ ಪ್ರವೇಶ ಮಾಡದಂತೆ ಕಬ್ಬಿಣ ಗೇಟನ್ನು ಅಳವಡಿಸಿರುತ್ತೇವೆ. ಈ ದಿನ ದಿನಾಂಕ:02.12.2022 ರಂದು ನಾನು, ನನ್ನ ಗಂಡ ಹಾಗೂ ಕೆಲಸದಾಳು ಧರ್ಣಪ್ಪ ರವರು ತೋಟದಲ್ಲಿ ಕೆಲಸ ಮಾಡುತ್ತಿರುವ ಸಮಯ ಸಂಜೆ ಸುಮಾರು 4:15 ಗಂಟೆಗೆ ನಮ್ಮ ತೋಟದ ಮೇಲಿಂದ ಅಂದರೆ ನಾವು ಜಮೀನಿಗೆ ಗೇಟು ಅಳವಡಿಸಿದ ಸ್ಥಳದಲ್ಲಿ ಜೋರಾದ ಶಬ್ದ ಬರುತ್ತಿರುವುದನ್ನು ಕೇಳಿ ನಾವು ಏನೆಂದು ನೋಡಲು ಅಲ್ಲಿಗೆ ಹೋದಾಗ ನಮಗೆ ಪರಿಚಯ ಇರುವ ಚಂದ್ರಶೇಖರ ಶೆಟ್ಟಿ ಮತ್ತು ಕುಲದೀಪ್ ಹಾಗೂ ಹಸಿರು ಶಾಲು ಧರಿಸಿದವರ ನೋಡಿ ಪರಿಚಯವಿರದ ಇತರ ಕೆಲವು ಮಂದಿ ನಮ್ಮ ಕಬ್ಬಿಣದ ಗೇಟನ್ನು ಮುರಿದು ಪಿಕ್‌ಅಪ್ ವಾಹನವೊಂದಕ್ಕೆ ತುಂಬಿಸಿಕೊಂಡು ಪಿಕ್‌ಅಪ್ ವಾಹನವನ್ನು ರಭಸವಾಗಿ ಅಲ್ಲಿಂದ ಚಲಾಯಿಸಿಕೊಂಡು ಹೋದರು. ನಾವು ಅವರನ್ನು ನಿಲ್ಲುವಂತೆ ಸೂಚಿಸಿದರೂ ಕೂಡಾ ಅವರು ವಾಹನವನ್ನು ನಿಲ್ಲಿಸದೇ ನಮ್ಮ ಗೇಟನ್ನು ಕಳವು ಮಾಡಿಕೊಂಡು ಹೋಗಿರುತ್ತಾರೆ. ನಾವು ಎರಡು ವರ್ಷದ ಹಿಂದೆ ಈ ಗೇಟನ್ನು ಅಳವಡಿಸಿದ್ದು ರೂ.30,000/– ವೆಚ್ಚವಾಗಿರುತ್ತದೆ.

ನಮ್ಮ ಜಮೀನಿಗೆ ಅಕ್ರಮ ಪ್ರವೇಶ ಮಾಡಿ ನಾವು ಅಳವಡಿಸಿದ್ದ ಕಬ್ಬಿಣದ ಗೇಟನ್ನು ಕಳವು ಮಾಡಿಕೊಂಡು ಹೋದವರ ವಿರುದ್ದ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮಕೈಗೊಳ್ಳಬೇಕಾಗಿ ಕೋರಿಕೆ.

ಪುಂಜಾಲಕಟ್ಟೆ
ದಿನಾಂಕ:02.12.2022”

(Emphasis added)

A perusal at the complaint would indicate the allegation against the petitioner is of taking away the gate that was installed in the property of the complainant which was also the pathway to the property of the petitioner. The complainant narrates that due to the act of the petitioner, she has suffered a loss of Rs.30,000/-, which is the cost of the gate. Therefore, a crime in Crime No.94 of 2022 is registered for offences punishable under Section 379 and 447 of the IPC i.e., for criminal trespass and theft.

11. The petitioner was produced before the Magistrate at 5.15 p.m. on the next date i.e., 03.12.2022, in connection with a crime that was registered against the petitioner in Crime No.94 of 2022. The learned Magistrate grants interim bail to the petitioner on 03-12-2022. The order granting interim bail, records the factum of assault by the police on the petitioner and directs the matter to be referred to the higher authorities for appropriate action against the 4th respondent. The order granting interim bail reads as follows:

> *"Accused by name Kuldeep, aged about 23 years, S/o Chandrashekar Shetty, R/at Baramelu House., Puttila Village and Post, Belthangady Taluk is produced before me through PC 2512 and PC 2480 of Punjalkatte Police Station at 5.15 p.m. in the open Court on 3-12-2022 and I.O. also filed remand application, arrest*

memo, details and Aadhaar card of accused and medical checkup report of the above said accused.

On enquiry, the accused stated that he was arrested on 2-12-2022 at night hours at 8 p.m. by the police and same was intimated to his mother. In spite of resistance of his mother, the police pulled him, arrested, brought to the station. Further the accused has complained against he police about ill-treatment during his arrest. According to him Mr. Suthesh, PSI of Punjalkatte Police has assaulted him during his arrest in his house.

In this regard, it is seen that, the police officer has not followed the guidelines of Hon'ble Supreme Court at the time of arrest of the accused, that too for the offence punishable under Section 447 and 379 of IPC which are punishable up to 3 years.

Issue intimation to his higher authority to take necessary action against the Police Officer for violation of the personal liberty of the accused.

Sri S.P.C. Advocate seeks permission to take signature of accused to the Vakalath, permission granted. After obtaining the signature of the accused, the learned counsel files bail application U/s 437 of Cr.P.C. along with interim bail application filed U/s 437(1) of Cr.P.C., Memo with 3 copies of documents are produced herewith.

The learned APP opposed for the granting of interim bail application orally.

Heard and orders.

The learned counsel for accused has filed interim bail application by stating that the accused has not committed any offence as alleged by the police. He is permanent resident of Puthila Village of Belthangady Taluk. He has just enrolled at Karnataka Advocate's Welfare Fund Trust, Bangalore on 2-11-2022. He is law abiding citizen. The accused and complainant had civil dispute. In that aspect the accused filed an original suit before Civil Judge at Bantwala as per O.S.No.291 of 2022 not to block the road way and Court had granted the ex-parte injunction against the complainant. In the above case the police were

completed the Mahazar etc., the offence is not punishable with death or life imprisonment. The accused undertakes to obey any of the conditions which the Hon'ble Court may impose on him for granting bail. The accused is ready to offer solvent surety as per the order of the Hon'ble court.

Having gone through the materials, that the alleged offences as per FIR under Sections 447 and 379 of IPC which are non-bailable in nature and punishable for imprisonment up to 3 years.

Herein the learned counsel for accused vehemently argued that, the personal liberty of the accused person is hereby curtailed by wrongfully arresting him without following procedures. Apart from that he has furnished the copy of complaint, in which the accused person himself complained before the same police, by stating about the violation of Ex-parte TI order granted by the civil Court. The copy of the said complaint and the police acknowledgment has been given by registering it in PTN/ No.637/PTN/PPS/2022 dated 2-12-2022. Thereafter only upon the receipt of complaint from the informant, this case has been registered against the accused.

The following citations have been furnished by the learned counsel for accused as under:

1) *2016 Crl.L.J.3156*
2) *2014 (2) SCC 1*
3) *ILR 1992 KAR 754*
4) *2012 (1) SCC 40*
5) *2014 (8) SCC 273*

In the above citations are with respect to procedure followed by the Police Officer before arresting the accused person. Furthermore, the personal liberty of accused person will not be curtailed during the arrest and granting of bail U/s 437 and 439 of Cr.P.C. Herein this case it is one thing is very much clear that, there is civil dispute between the accused and complainant in the suit in O.S.No. 291 of 2022 filed by the accused himself. Furthermore, the court granted Ex-parte TI order in his favour. He also complained before the police for the violation of the said order. Moreover allegations leveled against the accused is heinous in nature to the effect that present FIR has been registered. That the

said accused is permanent resident of Puthila Village, Belthangady Taluk of D.K. District and he is practicing as an Advocate. He is respected and law abiding person. He has no intention to absconding or protracting the trial. He is ready to assist the Police during the investigation and ready to abide by any reasonable condition imposed by this Court at the time of his release on bail.

Having considering the facts and circumstances of the case on hand, it is necessary to grant interim order in respect of interim bail application. Hence, the said application is hereby allowed subject to following conditions:

1. *The accused shall execute his personal bond for a sum of Rs.50,000/- with a surety for like sum.*
2. *He shall appear before the court whenever he is directed to do so.*

Surety by name Sri Kunhanna Shetty, S/o Babu Shetty, Aged about 55 years, R/at Bedrady House, Puthila Village, Belthangady Taluk, D.K. District is present and ready to stand as surety to accused. Further surety filed affidavit and offered documents with regard to his landed property bearing Sy.No.44/1 measuring 0.09 acres of Puthila Village, Belthangady Taluk, D.K., market value of the said property is more than Rs.10,00,000/- and copy of RTC and his Aadhaar Card is produced. Further surety undertakes to present the accused before this court on all dates of hearing without fail. Heard, perused the surety affidavit and documents.

Surety is held sufficient and accepted."

(Emphasis added)

As observed hereinabove, the Court records the allegation of the petitioner that the 4th respondent has assaulted him during his arrest in his house at 8.00 p.m. and records that both the offences were punishable upto 3 years, and was an offshoot of a civil dispute. On such allegations of assault by the fourth respondent, it

is directed that intimation be sent to the higher authorities to take necessary action against 4th respondent for violation of personal liberty. On grant of interim bail, the petitioner is set at liberty, since he was injured, he is admitted to the Father Mullers Hospital for treatment. He was in the hospital for 2 days between 03-12-2022 and 05-12-2022. Records of admission at the hospital and the wound certificate is also appended to the petition. It transpires that the police record the statement of the petitioner while in the hospital, but no action is taken against the accused. The petitioner on his discharge from the hospital and coming out of the trauma, registers a complaint on 09-12-2022. The complaint forms the fulcrum of the entire allegations in the case at hand, therefore, it is necessary to notice the complaint in its entirety and is extracted for the purpose of quick reference:

"ದಕ್ಷಿಣ ಕನ್ನಡ ಪೋಲಿಸ್ ವರಿಷ್ಠಾಧಿಕಾರಿಯವರಿಗೆ

ಇರವರೊಳಗೆ,
ಕುಲದೀಪ್
ಬಿನ್ ಚಂದ್ರಶೇಖರ ಶೆಟ್ಟಿ
ಪ್ರಾಯ 23
ಬರಮೇಲು ಮನೆ, ಪುತ್ತಿಲ ಗ್ರಾಮ ಮತ್ತು ಅಂಚೆ
ಬೆಳ್ತಂಗಡಿ ತಾಲೂಕು, ದ.ಕ.574214 *ಪಿರ್ಯಾದಿದಾರರು*

ಮತ್ತು

ಪಿಎಸ್ಐ ಸುತೇಶ್ ಕೆ.ಪಿ
ಪುಂಜಲಕಟ್ಟೆ ಪೋಲಿಸ್ ಠಾಣೆ
ಪುಂಜಲಕಟ್ಟೆ, ಬೆಳ್ತಂಗಡಿ ತಾಲೂಕು ದಕ್ಷಿಣ ಕನ್ನಡ *ಆರೋಪಿ*

ಪಿರ್ಯಾದಿ

ಮೇಲ್ಕಾಣಿಸಿದ ಪಿರ್ಯಾದಿದಾರನಾದ ನಾನು ತಮ್ಮ ಸನ್ನಿಧಾನದಲ್ಲಿ ಹರಿಕೆ ಮಾಡಿಕೊಳ್ಳುವುದೇನೆಂದರೆ:

1. ನಾನು ಮಂಗಳೂರಿನಲ್ಲಿ ನ್ಯಾಯಾವಾದಿಯಾಗಿ ಸುಮಾರು ಒಂದು ತಿಂಗಳಿನಿಂದ ವೃತ್ತಿ ಮಾಡುತ್ತಿದ್ದೇನೆ.
2. ನನ್ನ ಹೆಸರಿನಲ್ಲಿ ಬಂಟ್ವಾಳ ತಾಲೂಕಿನ ದೇವಸ್ಯ ಮೂಡುರು ಗ್ರಾಮದ 2/16 ಮತ್ತು 2/18 ಸರ್ವೆನಂಬರ್‌ನಲ್ಲಿ ಆಸ್ತಿಯಿದ್ದು ಈ ಬಗ್ಗೆ ನಾನು ಬಂಟ್ವಾಳ ಸಿವಿಲ್ ನ್ಯಾಯಾಲಯದಿಂದ ತಾರೀಕು. 01.12.2022ರಂದು ತಾತ್ಕಾಲಿಕ ನಿರ್ಬಂಧಕಾಜ್ಞೆಯನ್ನು ಪಡೆದು ತಾರೀಕು 02.12.2022ರಂದು ಸದ್ರಿ ಒ.ಎಸ್.ಸಂಖ್ಯೆ 394/2022 ತಾತ್ಕಾಲಿಕ ನಿರ್ಬಂಧಕಾಜ್ಞೆ ಆದೇಶ ಪ್ರತಿಯನ್ನು ಸಂಜೆ ಸುಮಾರು 4 ಗಂಟೆಯ ಹೊತ್ತಿಗೆ ಪುಂಜಲಕಟ್ಟೆ ಪೋಲಿಸ್ ಠಾಣೆಯ ಠಾಣಾಧಿಕಾರಿಗೆ ನೀಡಿರುತ್ತೇನೆ. ಆ ಸಮಯದಲ್ಲಿ ನನ್ನ ದೂರನ್ನು ಠಾಣಾಧಿಕಾರಿಗಳು ಸ್ವೀಕರಿಸಿ ನಂತರ ಅದರ ಸ್ವೀಕೃತಿಯನ್ನು ನೀಡಿರುತ್ತಾರೆ. ಸ್ವೀಕೃತಿಯಲ್ಲಿ ನಾನು ನಿರ್ಬಂಧಕಾಜ್ಞೆಯ ಪ್ರತಿಯನ್ನು ಇಟ್ಟಿರುತ್ತೇನೆ. ಅದೇ ಸಮಯದಲ್ಲಿ ನನ್ನ ತಂದೆಯವರು ಮತ್ತು ಅವರ ಸೇವಕರು ನಮ್ಮ ದೇವಸ್ಯ ಮೂಡುರು ಗ್ರಾಮದ ನಮ್ಮ ಜಮೀನಿಗೆ ಹೋಗಿರುವ ಸಮಯದಲ್ಲಿ ಅಲ್ಲಿ ಯಾರೋ ಕಿತ್ತು ಹಾಕಿದ ಗೇಟ್ ಇರುತ್ತದೆ ಅಕ್ಕಪಕ್ಕದ ಮನೆಯವರಲ್ಲಿ ಈ ಬಗ್ಗೆ ಕೇಳಿದೆವೆ ಆದರೆ ಯಾರು ಅದಕ್ಕೆ ಸ್ಪಂದನೆ ನೀಡಲಿಲ್ಲ ಅದಕ್ಕಾಗಿ ನಮ್ಮ ಜಮೀನಿಗೆ ಬಂದಿದ್ದ ಪಿಕಾಪ್ ಒಂದರಲ್ಲಿ ಆ ಗೇಟ್‌ನ್ನು ನಮ್ಮ ಮನೆಗೆ ತೆಗೆದುಕೊಂಡು ಹೋಗಿ ಹಾಕಿರುತ್ತೇವೆ ಎಂದು ಹೇಳಿರುತ್ತಾರೆ ನಂತರ ಎದುರಾಲಿ ತಂಡದವರು ಠಾಣೆಗೆ ಹೋಗಿ ನಮ್ಮ ಗೇಟ್ ಕಳುವಾಗಿದೆ ಎಂದು ಸುಳ್ಳು ಆರೋಪವನ್ನು ಮಾಡುತ್ತಾರೆ. ನಾನು ನೀಡಿದ ದೂರು ಠಾಣೆಯಲ್ಲಿ ಇದ್ದರೂ ಎದುರಾಳಿ ತಂಡದವರ ದೂರನ್ನು ಸ್ವೀಕರಿಸಿ ಠಾಣೆಯಿಂದ ನನ್ನ ಗೆಳೆಯ ವಕೀಲರಾದ ಚಂದ್ರಹಾಸ ಈಶ್ವರಮಂಗಳ ಅವರೊಂದಿಗೆ ಮಾತನಾಡಿರುತ್ತಾರೆ ಮತ್ತು ವಕೀಲರು ಮಹಿಳ ಅಧಿಕಾರಿಯೊಂದಿಗೆ ನೀವು ಯಾವ ವ್ಯಾಪ್ತಿಗೆ ಸೇರಿದವರು ಮತ್ತು ನಿಮ್ಮ ಹೆಸರು ಏನು ಎಂದು ವಕೀಲರು ಅವರಲ್ಲಿ ಪ್ರಶ್ನಿಸಿರುತ್ತಾರೆ. ಆ ಸಮಯದಲ್ಲಿ ಮಹಿಳಾಧಿಕಾರಿಯು ನಿಮ್ಮಲ್ಲಿ ಯಾಕೆ ಹೇಳಬೇಕು ಎಂದು ಪ್ರಶ್ನಿಸಿದರು ನಂತರ ಅವರು ಅವರ ಹೆಸರು ಮತ್ತು ಯಾವ ವ್ಯಾಪ್ತಿಗೆ ಸೇರಿದವರು ಎಂದು ಕೇಳಿರುತ್ತಾರೆ. ಅವರು ನಮ್ಮ ಪುಂಜಲಕಟ್ಟೆ ಪೋಲೀಸ್ ಠಾಣೆಗೆ ಸೇರಿದವರು ಆಗಿರುವುದಿಲ್ಲ ಮತ್ತು ಇದರ ಬಗ್ಗೆ ವಿಚಾರಣೆ ಮಾಡುವಾಗ ನಾವು ಗೇಟ್ ನಮ್ಮದೆ ಎಂದು ಹೇಳಿರುತ್ತೇವೆ ನಂತರದಲ್ಲಿ ಪ್ರಕಾಶ್ ಠಾಣಾಧಿಕಾರಿರವರು ನನ್ನ ಮೊಬೈಲ್ ಗೆ ಕರೆ ಮಾಡಿ ಜೊರಾಗಿ ಮಾತನಾಡಿರುತ್ತಾರೆ. ನೀವು ಹೇಗೆ ಗೇಟನ್ನು ತೆಗೆದುಕೊಂಡು ಬಂದಿದ್ದಿರಿ ಎಂದು ಹೇಳಿ ಅನೇಕ ಪ್ರಶ್ನೆಗಳನ್ನು ಜೊರಾಗಿ ಎದುರಾಳಿ ಪಕ್ಷದವರ ಪರವಾಗಿ ಮಾತನಾಡಿರುತ್ತಾರೆ. ಆ ಸಮಯದಲ್ಲಿ ನಾನು ಮೊಬೈಲ್‌ನಲ್ಲಿ ರೆಕಾರ್ಡ್ ಇಟ್ಟ ವಿಷಯ ಠಾಣಾಧಿಕಾರಿಗಳಿಗೆ ತಿಳಿದು ಏಕಾಏಕಿ ಕರೆಯನ್ನು ಕಟ್ ಮಾಡಿರುತ್ತಾರೆ. ನಂತರದಲ್ಲಿ ಠಾಣೆಯ ಪಿಎಸ್‌ಐ ಆಗಿರುವಂತಹ ಸುತೇಶ್ ಎಂಬವರು ನನಗೆ ಕರೆ ಮಾಡಿರುತ್ತಾರೆ. ನನಗೆ ಮೊದಲು ಅದು ಪಿಎಸ್‌ಐ ಎಂದು ತಿಳಿಯದೆ ನೀವು ಯಾರು ಎಂದು ಪ್ರಶ್ನಿಸಿರುತ್ತೇನೆ. ಈ ಸಮಯದಲ್ಲಿ ನಾನು ಮೊಬೈಲ್‌ನಲ್ಲಿ ರೆಕಾರ್ಡ್ ಇಟ್ಟಿರುತ್ತೇನೆ. ಆ ಸಮಯದಲ್ಲಿ ಪಿಎಸ್‌ಐ ಸುತೇಶ್‌ರವರು ನನಗೆ ಬೇರೊಂದು ಕರೆ ಬಂತು ನಂತರ

ಮಾಡುತ್ತೇನೆ ಎಂದು ಹೇಳಿದಾಗ ನಾನು ಈಗಲೇ ಮಾತನಾಡಿ ಎಂದು ಹೇಳಿರುತ್ತೇನೆ. ಆ ಸಮಯದಲ್ಲಿ ಪಿಎಸ್‌ಐಯವರು ನೋಡಪ್ಪ ನನಗೆ ಹೆದರಿಕೆ ಏನು ಇಲ್ಲ ಎಂದು ನನ್ನಲ್ಲಿ ಏಕವಚನದಿಂದ ಮಾತನಾಡಿರುತ್ತಾರೆ ಮತ್ತು ನಾನು ಅವರಿಗೆ ಯಾವುದೇ ರೀತಿಯ ಏಕವಚನ ಹಾಗೂ ಅವ್ಯಾಚ್ಯ ಶಬ್ಧಗಳಿಂದ ಬೈದಿರುವುದಿಲ್ಲ. ಈ ಸಮಯದಲ್ಲಿ ಮಾತನಾಡಿದ ಅವರು ನನ್ನನ್ನು ಬೆದರಿಸಿ ನಿನ್ನ ಮೇಲೆ ಎಫ್‌ಐಆರ್ ದಾಖಲಿಸುತ್ತೇನೆ ಎಂದು ಹೇಳಿರುತ್ತಾರೆ. ನಂತರದಲ್ಲಿ ಅವರು ನನ್ನ ಮೇಲೆ ನಾನು ಗೇಟ್ ಅಗೆದು ತೆಗೆಯುವ ಯಾವುದೇ ರೀತಿಯ ಸಾಕ್ಷಿ ಇಲ್ಲದೆ ಯಾವುದೇ ರೀತಿಯ ಫೋಟೋ ಪ್ರತಿಗಳು ಇಲ್ಲದೆ ಸುಳ್ಳು ಸಾಕ್ಷಿಯನ್ನು ಸೃಷ್ಟಿಸಿ ನನ್ನ ಮೇಲೆ ಎಫ್‌ಐಆರ್ ದಾಖಲಿಸಿರುತ್ತಾರೆ. ***ನಂತರದಲ್ಲಿ ಯಾವುದೇ ರೀತಿಯ ಸುಳಿವು ಇಲ್ಲದೆ ಸುಮಾರು 8 ಗಂಟೆಯ ಹೊತ್ತಿಗೆ ಪೋಲೀಸರು ಯಾವುದೇ ರೀತಿಯ ಎಫ್‌ಐಆರ್ ಅಥವಾ ಅರೆಸ್ಟ್‌ವಾರೆಂಟ್ ಪ್ರತಿ ಹಿಡಿದುಕೊಂಡು ಬರದೆ ನನ್ನ ಮನೆಗೆ ಬಂದು ನನ್ನ ಮೇಲೆ ಹಲ್ಲೆ ನಡೆಸಿದ್ದಾರೆ. ಈ ಸಮಯದಲ್ಲಿ ನಾನು ವಕೀಲ ಎಂದು ಹೇಳಿರುತ್ತೇನೆ ಆಗ ಪಿಎಸ್‌ಐ ಆದ ಸುತೇಶ್‌ರವರು ನೀನು ಯಾವ ವಕೀಲನೋ ಬೊಳಿಮಗನೆ ಎಂದು ಅವಾಚ್ಯ ಶಬ್ಧಗಳಿಂದ ಬೈದಿರುತ್ತಾರೆ. ನಂತರ ಅವರ ಒಟ್ಟಿಗೆ ಬಂದಿರುವಂತ ಪ್ರಕಾಶ್ ಮತ್ತು ಇನ್ನೊಬ್ಬ ಪೋಲೀಸ್ ನನ್ನ ಮೇಲೆ ಅಂಗಳದಲ್ಲಿ ಇದ್ದ ಕಬ್ಬಿಣದ ರಾಡ್‌ನಲ್ಲಿ ಬಲಕೈಯ ಗಂಟಿಗೆ ಬಾರಿಸುತ್ತಾರೆ.*** *ಆ ಸಮಯದಲ್ಲಿ ನಾನು ನನ್ನ ಬಾವನಾದ ಸುಜೀತ್ ಎಂಬವರಲ್ಲಿ ಮೊಬೈಲ್‌ನಲ್ಲಿ ಚಿತ್ರೀಕರಣ ನಡೆಸಲು ಹೇಳಿರುತ್ತೇನೆ. ಆ ಸಮಯದಲ್ಲಿ ಪಿಎಸ್‌ಐ ಆದ ಸುತೇಶ್ ಮತ್ತು ಇನ್ನಿಬ್ಬರೂ ಕಾನ್ಸಟೇಬಲ್‌ಗಳು ನನ್ನನ್ನು ಅವಾಚ್ಯಶಬ್ದಗಳಿಂದ ನಿಂದಿಸಿರುತ್ತಾರೆ. ಇದರ ಮೊದಲು ನಾನು ನನ್ನ ಮನೆಯ ಸಿಟ್‌ಔಟ್‌ನಲ್ಲಿ ನಿಂತಿರುವಾಗ ಅಲ್ಲಿಗೆ ಬಂದ ಪಿಎಸ್‌ಐ ಚಿತ್ರೀಕರಣ ನಡೆಸಲು ನಾನು ಹೇಳಿರುತ್ತೇನೆ. ಆ ಸಮಯದಲ್ಲಿ ನನ್ನ ಭಾವ ಚಿತ್ರೀಕರಣವನ್ನು ಮಾಡಿರುತ್ತಾರೆ. ಆಗ ಪಿಎಸ್‌ಐ ಆದ ಸುತೇಶ್ ರವರು ವಿಡಿಯೋ ಮಾಡಿ ಏನೂ ಪ್ರಯೋಜನವಿಲ್ಲ. ಇವನ ಮೇಲೆ ಎಫ್‌ಐಆರ್ ಆಗಿದೆ ಎಂದು ಹೇಳಿ ನನ್ನನ್ನು ಅವಾಚ್ಯ ಶಬ್ಧದಿಂದ ಬೈದು ಗಾಡಿಯ ಒಳಗೆ ನೂಕಿರುತ್ತಾರೆ. ಆ ಸಮಯದಲ್ಲಿ ಗಾಡಿಯ ಬದಿಯಲ್ಲಿರುವ ಮೊಣಚಾದ ಒಂದು ಭಾಗ ನನ್ನ ಬಲಕೈಯ ಭುಜದ ಬಿದಿಗೆ ತಾಗಿರುತ್ತದೆ.* ***ನಂತರದಲ್ಲಿ ನನ್ನ ತಾಯಿಯು ಅತ್ತುಕೊಂಡು ನನ್ ಮಗ ಏನು ಮಾಡಿಲ್ಲ ಅವನನ್ನು ಬಿಟ್ಟು ಬಿಡಿ ಎಂದು ಕೇಳಿಕೊಂಡಿರುತ್ತಾರೆ ಮತ್ತು ಎಷ್ಟೆ ಕೂಗಿದರೂ ನನ್ನ ತಾಯಿಯನ್ನು ದೂಡಿ ವಾಹನವನ್ನು ಚಲಾಯಿಸುವಂತೆ ಮಾಡಿದ್ದಾರೆ ಮತ್ತು ನನ್ನ ಅಮ್ಮನ ಮೇಲೂ ಎಫ್‌ಐಆರ್ ಮಾಡವಂತೆ ಬೆದರಿಸಿರುತ್ತಾರೆ ನಂತರದಲ್ಲಿ ನನಗೆ ಪೋಲೀಸ್ ಜೀಪ್‌ನಲ್ಲಿ ಕೊಳ್ಳಿರಿಸಿಕೊಂಡು ನನ್ನನ್ನು, ನನ್ನ ಮನೆಯಿಂದ ಕೊಂಡು ಹೋಗಿರುತ್ತಾರೆ. ನಂತರದಲ್ಲಿ ನೀನು ಮಾತ್ರ ವಕೀಲನೋ, ನೀನು ಇನ್ನು ಚೈಲ್ಡ್. ನಿನಗೆ ಯಾರು Enrolment Certificate ಕೊಟ್ಟಿರುವುದು ನೀನು ವಕೀಲನಾದರೆ ಕೋರ್ಟ್‌ನಲ್ಲಿ. ಆದರೆ ನಾನು ಎಲ್ಲೆ ಇದ್ದರು 24 ಗಂಟೆಯು ಪೋಲೀಸ್ ಎಂದು ದೊಡ್ಡಧ್ವನಿಯಲ್ಲಿ ಹೇಳಿ ನನ್ನ ತಲೆಗೆಬಾರಿಸಿರುತ್ತಾರೆ ಮತ್ತು ನಿನಗೆ ಪೋಲೀಸರ ಜೊತೆಗೆ ಹೇಗೆ ಮಾತನಾಡಬೇಕು ಎಂದು ಗೊತ್ತಿಲ್ಲವ ಸೂಳೆಮಗನೆ ಎಂದು ಅವಾಚ್ಯಶಬ್ಧಗಳಿಂದ ಬೈದು ನೀನು ಎಷ್ಟೇ ದೊಡ್ಡ ವಕೀಲನಾದರೂ ನಿನ್ನ ಕೈಯಲ್ಲಿ ಏನೂ ಮಾಡಲು ಸಾಧ್ಯವಿಲ್ಲ.*** *ನಿಮ್ಮ ವಕೀಲ ಸಂಘದಿಂದ ಯಾರೇ ಬಂದರೂ, ರೈತ ಸಂಘದವರೂ ಬಂದರೂ ಅಥವಾ ಯಾರೆ ಬಂದರೂ ನಿನ್ನನ್ನು ಬಿಟ್ಟುಕೊಡಲು ಆಗುವುದಿಲ್ಲ ಎಂದು ಹೇಳಿ ನನಗೆ ಪಿಎಸ್‌ಐ ಮತ್ತು ಪ್ರಕಾಶ ಮತ್ತು ಇನ್ನೊಬ್ಬ ಕಾನ್ಸ್‌ಟೇಬಲ್ ರವರು ಬೈದು ಹೊಡೆದಿರುತ್ತಾರೆ. ನಂತರದಲ್ಲಿ ಮಂಜಲಕಟ್ಟೆಗೆ ಹೋಗುವ ದಾರಿಯಲ್ಲಿ ನನ್ನನ್ನು ಸ್ಟೇಷನ್‌ಗೆ ಕರೆದುಕೊಂಡು ಹೋಗುವಾಗ ದಾರಿ ಮಧ್ಯ ವಾಹನವನ್ನು ನಿಲ್ಲಿಸಿ ಜೀಪಿನಿಂದ ಹೊರ ತಳ್ಳಿ ನನ್ನ ಮಾಮಾಂಗಕ್ಕೆ ಹೊಡೆದು ನಂತರ ನನ್ನ ಎದೆಯ ಭಾಗಕ್ಕೆ ಬೂಟಿನಿಂದ*

ತುಳಿದಿರುತ್ತಾರೆ ನಂತರ ನನ್ನ ಮೊಬೈಲ್ ಫೋನ್‌ನನ್ನು ಕಿತ್ತುಕೊಂಡು ನನ್ನಲ್ಲಿ ಆದರ ಲಾಕ್ ತೆಗೆದಿರುತ್ತಾರೆ. ಇದು ನನ್ನ ವೈಯಕ್ತಿಕ ವಿಷಯವಾಗಿರುವುದರಿಂದ ಮೊಬೈಲ್‌ನು ಕೀಳುವುದು ತಪ್ಪೆಂದು ಹೇಳಿದೆ. ಆಗ ಅವರು ಹೋಗು ನಿನ್ನ ಅಮನ್ ಎಂದು ಅವಾಚ್ಯ ಶಬ್ಧದಿಂದ ಬೈದಿರುತ್ತಾರೆ. ನಂತರ ಕಾನ್ಸ್‌ಟೇಬಲ್ ಆದ ಪ್ರಕಾಶ್ ಎಂಬವರು ನಿಕ್ ಪೋಲೀಸ್ ಕಾನ್ಸ್‌ಟೇಬಲ್‌ದ ಎಂಚ ಪತೆರೋಡು ಪನ್ನದ್ ಗೋತ್ತಿಜ್ಜ ನಾಯಿದಮಗ ಎಂದು ಅವಾಚ್ಯ ಶಬ್ದದಿಂದ ಬೈದಿರುತ್ತಾರೆ. ನಂತರ ನಿನ್ನ ಬೆನ್ನ ಹಿಂದೆ ಯಾರು ಇದ್ದಾರೆ ಚಂದ್ರಹಾಸವ? ಅಲ್ಲ ರೈತರ ಸಂಘದವರು ಅಥವಾ ಜಿಲ್ಲೆಯ ವಕೀಲರ ಎಂದು ಕೇಳಿರುತ್ತಾರೆ. ಆಗ ಪಿಎಸ್‌ಐ ರವರಾದ ಸುತೇಶ್‌ರವರು ನೀನು ಜಿಲ್ಲೆಯ ದೊಡ್ಡ ವಕೀಲ ಅಲ್ಲ ನಾನು ನೋಡಿದ್ದೇನೆ ಎಂದು ಹೇಳಿ ಹಿಯಾಳಿಸಿದ್ದಾರೆ. ನಿನ್ನ ಜಿಲ್ಲೆಯ ರೈತಸಂಘದ ಅಧ್ಯಕ್ಷಯಾರು ಎಂದು ನನ್ನಲ್ಲಿ ಕೇಳಿರುತ್ತಾರೆ. ಮತ್ತು ಆ ರೈತ ಸಂಘದ ಅಧ್ಯಕ್ಷ ಯಾರೇ ಬೊಳಿಮಗ ಆಗಿರಲಿ ನಾನು ಅವನ ಮೇಲೂ ಎಫ್‌ಐಆರ್ ಮಾಡುತ್ತೇನೆ ಎಂದು ಹೇಳಿದಲ್ಲದೆ ನನ್ನ ತಂದೆ ತಾಯಿ ಅಣ್ಣತಮ್ಮ ಎಲ್ಲರ ಮೇಲೂ ಎಫ್‌ಐಆರ್ ಬೇಕು ಎಂದು ಹೇಳಿ ನನ್ನನ್ನು ಹೆದರಿಸಿರುತ್ತಾರೆ. ಮತ್ತು ನಾವು ಹೇಳಿದಾಗೆ ಕೇಳದಿದ್ದರೆ ನಿಮ್ಮ ಭೂಮಿಯ ವಿಚಾರದಲ್ಲಿ ನಿಮ್ಮಗೆ ರೋಡ್ ಇಲ್ಲದಾಗೆ ಮಾಡುತ್ತೇನೆ. ಎಂದು ಬೆದರಿಸುತ್ತಾರೆ ಮತ್ತು ನಾನು ಕಳ್ಳತನ ಮಾಡಿದ್ದು ಹೌದು ಎಂದು ***ಒಪ್ಪದಿದ್ದಾರೆ ನಿನ್ನನ್ನು ಪೋಲೀಸ್ ಕಸ್ಟಡಿಗೆ ತೆಗೆದುಕೊಂಡು ಹೋಗಿ ನಿನಗೆ ಪೋಲೀಸ್ ಪವರ್‌ರನ್ನು ತೊರಿಸುತ್ತೇವೆ ಎಂದು ಹೇಳಿ ನನ್ನನ್ನು ಹೆದರಿಸಿರುತ್ತಾರೆ. ನಂತರ ಸ್ಟೇಷನ್‌ಗೆ ತಲುಪಿದ ನಂತರ ನನ್ನ ಮೈಮೇಲೆ ಅಂಗಿ ಇಲ್ಲದೆ ಇದ್ದ ಕಾರಣ ನನ್ನ ಮನೆಯವರು ಅಂಗಿತೆಗೆದುಕೊಂಡು ಬರುವಂತೆ ಹೇಳಿರುತ್ತಾರೆ. ನಂತರ ನನ್ನನ್ನು ಸ್ಟೇಷನ್‌ನಲ್ಲಿ ಲಾಕ್‌ಪ್‌ನಲ್ಲಿ ಹಾಕಿರುತ್ತಾರೆ. ಅವರೆಲ್ಲ ನನ್ನ ಮೇಲೆ ಒತ್ತಡ ಹೇರಿ ಗೇಟ್‌ನ್ನು ನಾನೆ ಎತ್ತಿಕೊಂಡು ಹೋದದ್ದು ಹೇಳಬೇಕು ಎಂದು ಬಲವಂತದಿಂದ ಹೇಳಿಸಿ ಅದನ್ನು ಚಿತ್ರೀಕರಣ ಮಾಡಿರುತ್ತಾರೆ. ನಂತರ ನನ್ನನ್ನು ಮೆಡಿಕಲ್ ಟೆಸ್ಟ್‌ಗೆ ಎಂದು ಸರಕಾರಿ ಆಸ್ಪತ್ರೆಗೆ ಕೊಂಡು ಹೋಗಿರುತ್ತಾರೆ. ಮೆಡಿಕಲ್ ಟೆಸ್ಟ್ ಆದ ನಂತರ ಠಾಣೆಗೆ ತಂದು ಲಾಕಪ್‌ನಲ್ಲಿ ಇರಿಸಿದ್ದಾರೆ ಮತ್ತು ನನ್ನನ್ನು ಅರೆನಗ್ನಗೊಳಿಸಿ ಲಾಕ್‌ಪ್‌ನಲ್ಲಿ ಇರಿಸಿದ್ದಾರೆ. ರಾತ್ರಿಯಿಡಿ ನಾನು ಲಾಕಪ್‌ನಲ್ಲಿ ಇದ್ದು ಬೆಳಿಗ್ಗೆ ಒಬ್ಬ ಕಾನ್ಸ್‌ಟೇಬಲ್ ನನಗೆ ಈಲಾ ಒಂಜಿ ವಕೀಲೆನ ನಿಕ್ ನಾಚಿಕೆ ಅಪುಜ ಎಂದು ಹೇಳಿ ಅವಮಾನಿಸುರತ್ತಾರೆ. ನಂತರ ಮಾಹಜರ್‌ಗೆ ಎಂದು ಕರೆದುಕೊಂಡು ಹೋಗಿ ನನ್ನ ಮನೆಯ ಅಂಗಳಕ್ಕೆ ಕರೆದುಕೋಂಡು ಹೋಗಿರುತ್ತಾರೆ. ನಂತರ ಅಲ್ಲಿಂದ ನನ್ನನ್ನು ವಾಪಸು ಠಾಣೆಗೆ ಕರೆದುಕೊಂಡು ಬಂದು ನಂತರ ಸಂಜೆ 5 ಗಂಟೆಗೆ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರುಪಡಿಸಿರುತ್ತಾರೆ.*** *ಪೋಲೀಸರ ಈ ಕೃತ್ಯದಿಂದ ನನಗೆ ಮಾನಸಿಕ ನೋವುಂಟಾಗಿದೆ ಈ ಬಗ್ಗೆ ನಾನು ನ್ಯಾಯಾಲಯದಿಂದ ಜಾಮೀನು ಪಡೆದುಕೊಂಡು ತಾರೀಕು 03.12.2022ರಂದು ಮಂಗಳೂರಿನ ತುಂಬೆಯಲ್ಲಿರುವ ಫಾದರ್ ಮುಲ್ಲರ್ಸ್ ಆಸ್ಪತ್ರೆಯಲ್ಲಿ ಒಳರೋಗಿಯಾಗಿ ದಾಖಲಾಗಿದ್ದ ಸಮಯ ಮಂಜಲಕಟ್ಟೆ ಪೊಲೀಸ್ ಠಾಣೆಯ ಪೋಲೀಸರು ಆಸ್ಪತ್ರೆಗೆ ಬಂದು ನನ್ನ ಹೇಳಿಕೆಯನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತಾರೆ ಆದರೆ ಇಲ್ಲಿಯ ತನಕ ಪೋಲೀಸರು ಆರೋಪಿಯ ವಿರುದ್ಧ ಈ ತನಕ ಯಾವುದೇ ಎಫ್‌ಐಆರ್‌ನು ದಾಖಲಿಸಿರುವುದಿಲ್ಲ. ಆರೋಪಿ ಪೋಲೀಸ್ ಅಧಿಕಾರಿಯಾದ ಕಾರಣ ಆತನ ಮೇಲೆ ಕಾನೂನುಕ್ರಮ ಜರಗಿಸಿರುವುದಿಲ್ಲ.*

ಆದುದರಿಂದ ಈ ಕೂಡಲೇ ಆರೋಪಿಯ ವಿರುದ್ಧ ಎಫ್‌ಐಆರ್ ದಾಖಲಿಸಿ ಆತನ ವಿರುದ್ಧ ಕಾನೂನುಕ್ರಮ ಜರಗಿಸಬೇಕೆಂದು ಪ್ರಾರ್ಥನೆ."

(Emphasis added)

The afore-extracted complaint brings in graphic details of the alleged torture meted out against the petitioner. The petitioner narrates that the 4th respondent along with others enters the house of the petitioner, does not even permit him to wear his shirt, drag him to the jeep and when questioned about a warrant or a FIR, the reply was with a few blows on him by the police. The complaint also narrates that his mother was pushed when she wanted to protect his son and object him being taken away illegally by the police. It is alleged that even after indicating that he was an Advocate, he was beaten and abused. The complaint further narrates that while in custody the petitioner was forced to write a statement that he has himself taken away the gate which would amount to admission of guilt. The complaint is also forwarded to the Hon'ble Chief Minister, the Home Minister, the Director General and Inspector General and the Chairman of the Human Rights Commission.

12. The learned senior counsel for the petitioner on an affidavit has produced electronic evidence i.e., the compact disc

which records the entire incident and has also produced a transcript of the conversation found in the compact disc, as well as photographs of the alleged torturous behavior of police upon the petitioner. I have seen the electronic evidence and have noticed the photographs that are produced before the Court. On such perusal, what would unmistakably emerge is the arrest of the petitioner is illegal and contrary to the judgments rendered by the Apex Court rendered from time to time, regarding necessity of arrest of the kind, *qua* the offences alleged against the petitioner.

13. The offences alleged against the petitioner are the ones punishable under Sections 379 and 447 of the IPC. Sections 379 and 447 of the IPC read as follows:

> *"**379. Punishment for theft.**—Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."*
>
> … … …
>
> ***447. Punishment for criminal trespass**.—Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."*

Section 379 deals with theft. Any person indulging in thieving would become punishable under Section 379 of the IPC and the maximum punishment is three years. Section 447 deals with

criminal trespass and whoever commits criminal trespass would be punished with a maximum term of three months or fine or both. Therefore, the offences punishable against the petitioner even if convicted would be for an imprisonment of 3 years to the maximum.

14. It now becomes germane to notice the judgments of the Apex Court on the issue of either unnecessary or illegal arrest of an accused, rendered from time to time. The Apex Court in the case of ***D.K. BASU V. STATE OF W.B.,***[1] has held as follows:

> *"…. …. ….*
>
> ***17. Fundamental Rights occupy a place of pride in the Indian Constitution. Article 21 provides "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression "life or personal liberty" has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries.*** *Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Clause (2) of Article 22 directs that the person arrested*

[1] ***(1997)1 SCC 416***

and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate. Article 20(3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguards provided to a person with a view to protect his personal liberty against any unjustified assault by the State. In tune with the constitutional guarantee a number of statutory provisions also seek to protect personal liberty, dignity and basic human rights of the citizens. Chapter V of the Criminal Procedure Code, 1973 deals with the powers or arrest of a person and the safeguards which are required to be followed by the police to protect the interest of the arrested person. Section 41 CrPC confers powers on any police officer to arrest a person under the circumstances specified therein without any order or a warrant of arrest from a Magistrate. Section 46 provides the method and manner of arrest. Under this section no formality is necessary while arresting a person. Under Section 49, the police is not permitted to use more restraint than is necessary to prevent the escape of the person. Section 50 enjoins every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The police officer is further enjoined to inform the person arrested that he is entitled to be released on bail and he may arrange for sureties in the event of his arrest for a non-bailable offence. Section 56 contains a mandatory provision requiring the police officer making an arrest without warrant to produce the arrested person before a Magistrate without unnecessary delay and Section 57 echoes clause (2) of Article 22 of the Constitution of India. There are some other provisions also like Sections 53, 54 and 167 which are aimed at affording procedural safeguards to a person arrested by the police. Whenever a person dies in custody of the police, Section 176 requires the Magistrate to hold an enquiry into the cause of death.

18. However, in spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the

police with a view to secure evidence or confession often resorts to third-degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. *A reading of the morning newspapers almost everyday carrying reports of dehumanising torture, assault, rape and death in custody of police or other governmental agencies is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the rule of law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder.*

19. The Third Report of the National Police Commission in India expressed its deep concern with custodial violence and lock-up deaths. It appreciated the demoralising effect which custodial torture was creating on the society as a whole. It made some very useful suggestions. It suggested:

"... An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.

(ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again. It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for

making the arrest, thereby clarifying his conformity to the specified guidelines. …"

The recommendations of the Police Commission (supra) reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. These recommendations, however, have not acquired any statutory status so far.

20. This Court in Joginder Kumar v. State of U.P. [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172] (to which one of us, namely, Anand, J. was a party) considered the dynamics of misuse of police power of arrest and opined: (SCC p. 267, para 20)

"No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. … No arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter."

21.Joginder Kumar case [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172] involved arrest of a practising lawyer who had been called to the police station in connection with a case under inquiry on 7-1-1994. *On not receiving any satisfactory account of his whereabouts, the family members of the detained lawyer preferred a petition in the nature of habeas corpus before this Court on 11-1-1994 and in compliance with the notice, the lawyer was produced on 14-1-1994 before this Court. The police version was that during 7-1-1994 and 14-1-1994 the lawyer was not in detention at all but was only assisting the police to detect some cases. The detenu asserted otherwise. This Court was not satisfied with the police version. It is noticed that though as on that day the relief in habeas corpus petition could not be granted but the questions whether there had been any need to detain the lawyer for 5 days and if at all he was not in detention then why was this Court not informed, were important questions which required an answer. Besides, if there was detention for 5 days, for what*

reason was he detained. The Court, therefore, directed the District Judge, Ghaziabad to make a detailed enquiry and submit his report within 4 weeks. The Court voiced its concern regarding complaints of violations of human rights during and after arrest. It said: (SCC pp. 263-64, paras 8 and 9)

"The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violations of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first — the criminal or society, the law violator or the law abider …."

This Court then set down certain procedural "requirements" in cases of arrest."

(Emphasis supplied)

The Apex Court in the case of ***ARNESH KUMAR V. STATE OF BIHAR[2],*** holds as follows:

"7. *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) CrPC which is relevant for the purpose reads as follows:*

[2] ***(2014) 8 SCC 273***

*"**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)****

(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)****

(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 be ensured,

and the police officer shall record while making such arrest, his reasons in writing:

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."

7.1. *From a plain reading of the aforesaid provision, it is evident that a person accused of an 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 his satisfaction that such person had committed the offence punishable as aforesaid. A 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."

... **...** **...**

9. Another provision i.e. Section 41-A CrPC aimed to avoid unnecessary arrest or threat of arrest looming large on the accused requires to be vitalised. Section 41-A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), which is relevant in the context reads as follows:

"41-A. Notice of appearance before 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."

The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, 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 officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

10. We are of the opinion that if the provisions of Section 41 CrPC which authorises 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 CrPC for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. 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 authorise detention;

11.5. 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;

11.6. Notice of appearance in terms of Section 41-A CrPC 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;

11.7. 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 the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court."

(Emphasis supplied)

In the case of ***MOHAMMED ZUBAIR V. STATE OF NCT OF DELHI AND OTHERS*** [3]***,*** the Apex Court holds as follows:

> *"…. …. ….*
>
> *28. Police officers are vested with the power to arrest individuals at various stages of the criminal justice process, including during the course of investigation. However, this power is not unbridled. In terms of Section 41(1)(b)(ii) of the CrPC, the police officer in question must be satisfied that such arrest is necessary to prevent the person sought to be arrested from committing any further offence, for proper investigation of the offence, to prevent the arrestee from tampering with or destroying evidence, to prevent them from influencing or intimidating potential witnesses, or when it is not possible to ensure their presence in court without arresting them.*
>
> *29. Police officers have a duty to apply their mind to the case before them and ensure that the condition(s) in Section 41 are met before they conduct an arrest. This Court has time and again, reiterated the importance of doing so, including in Arnesh Kumar v. State of Bihar,[9] where the Court observed:*
>
> ***"6. […] 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…"***
>
> ***30. We once again have occasion to reiterate that the guidelines laid down in Arnesh Kumar (supra) must be followed, without exception. The raison d'être of the powers of arrest in relation to cognizable offences is laid down in Section 41. Arrest is not meant to be and must not be used as a punitive tool because it results in one of***

[3] ***2022 SCC OnLine SC 897***

the gravest possible consequences emanating from criminal law : the loss of personal liberty. Individuals must not be punished solely on the basis of allegations, and without a fair trial. When the power to arrest is exercised without application of mind and without due regard to the law, it amounts to an abuse of power. The criminal law and its processes ought not to be instrumentalized as a tool of harassment. Section 41 of the CrPC as well as the safeguards in criminal law exist in recognition of the reality that any criminal proceeding almost inevitably involves the might of the state, with unlimited resources at its disposal, against a lone individual."

(Emphasis supplied)

Later, the Apex Court in the case of ***SATENDER KUMAR ANTIL V. CBI***[4] has held as follows:

> ***"27.*** *On the scope and objective of Sections 41 and 41-A, it is obvious that they are facets of Article 21 of the Constitution. We need not elaborate any further, in light of the judgment of this Court in Arnesh Kumar v. State of Bihar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] : (SCC pp. 278-81, paras 7-12)*
>
> ***"7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an 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 his satisfaction that such person had committed the offence punishable as aforesaid. A 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***

[4] ***(2022) 10 SCC 51***

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.

7.2. The 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. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police officer 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 (e) of clause (1) of Section 41CrPC.

8. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57CrPC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey:

8.1. 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 167CrPC. 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.

8.2. Before a Magistrate authorises detention under Section 167CrPC, 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 are 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 the condition precedent for arrest under Section 41CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused.

8.3. The Magistrate before authorising detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his 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 his satisfaction in writing that the Magistrate will authorise the detention of the accused.

8.4. 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.

9. … The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1)CrPC, 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 officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

10. We are of the opinion that if the provisions of Section 41CrPC which authorises 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 41CrPC for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-AIPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. 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 authorise detention;

11.5. 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;

11.6. Notice of appearance in terms of Section 41-ACrPC 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;

11.7. 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 the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-AIPC 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.

... ...

29. Despite the dictum of this Court in Arnesh Kumar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] , no concrete step has been taken to comply with the mandate of Section 41-A of the Code. This Court has clearly interpreted Sections 41(1)(b)(i) and (ii) inter alia holding that notwithstanding the existence of a reason to believe qua a police officer, the satisfaction for the need to arrest shall also be present. Thus, sub-clause (1)(b)(i) of Section 41 has to be read along with sub-clause (ii) and therefore both the elements of "reason to believe" and "satisfaction qua an arrest" are mandated and accordingly are to be recorded by the police officer.

... ...

32. We also expect the courts to come down heavily on the officers effecting arrest without due compliance of Section 41 and Section 41-A. We express our hope that the investigating agencies would keep in mind the law laid down in Arnesh Kumar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] , the discretion to be exercised on the touchstone of presumption of innocence, and the safeguards provided under Section 41, since an arrest is not mandatory. If discretion is exercised to effect such an arrest, there shall be procedural compliance. Our view is also reflected by the interpretation of the specific provision under Section 60-A of the Code which warrants the officer concerned to make the arrest strictly in accordance with the Code."

(Emphasis supplied)

The Apex Court in the case of ***D.K.BASU*** holds that fundamental rights occupy a place of pride in the Indian Constitution. Article 21 of the Constitution of India mandates that no person shall be deprived of his life or personal liberty except in

accordance with the procedure established by law. Personal liberty thus, is held a sacred and cherished right under the Constitution. The Apex Court also records that arrest of an accused during investigation of a cognizable offence would be considered justified only in one of those circumstances narrated. The Apex Court in the case of ***ARNESH KUMAR*** holds that, in offences which are punishable with less than seven years of imprisonment, merely because power of arrest is available, the accused should not be arrested unless a notice is issued under Section 41-A of the Cr.P.C., and summoned for questioning. The Apex Court then lays down guidelines clearly observing that an arrest cannot be automatic unless the Police satisfy themselves about the necessity of arrest and before doing so a notice of appearance in terms of Section 41-A Cr.P.C. should be issued. This is followed by the Apex Court in the case of ***MOHAMMED ZUBAIR***. The Apex Court holds that arrest is not meant to be and must not be used as a punitive tool because it results in gravest possible consequence emanating from criminal law, the loss of personal liberty. This is reiterated by the Apex Court in the case of ***SATENDER KUMAR ANTIL*** holding that it is expected of the Courts to come down heavily on officers who effect

arrest without due compliance with Sections 41 and 41A of the Cr.P.C. and the guidelines laid down by the Apex Court in ***ARNESH KUMAR***. The aforesaid are the distilled essence of what the Apex Court holds concerning issues of illegal arrest and snatching away personal liberty of an accused.

15. It is trite law that no arrest can be made because it is lawful for the Police to do so. The existence of power to arrest is one thing and justification for the said exercise is another. No arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafides of the complaint/information, as any arrest would deny a person of his liberty, which is a very serious matter, as arrest brings humiliation, curtails freedom and casts a scar forever.

16. If the case at hand is considered on the bedrock of the principles laid down by the Apex Court in the aforesaid cases, what would unmistakably emerge is, the personal liberty of the petitioner is snatched away by the 4th respondent and his cohorts in a brutal manner without even a warrant of arrest or even registration of an FIR. The records would reveal that he has been assaulted and

tortured throughout his travel in the jeep and has later been threatened to give evidence against himself, all of which cannot but be termed to be grossly illegal and blatantly highhanded. The power of arrest of an accused is misused and abused in the case at hand.

17. It is on the aforesaid acts of blatant violation of law the complainant registers the complaint on 09-12-2022. No crime comes to be registered immediately ostensibly on the ground that the complaint was against the 4th respondent who was the Station House Officer of Punjalakatte Police Station and others of the same police station. It is then the petitioner knocked at the doors of this Court, seeking the following prayers:

> 1. *Issue a Writ of Mandamus or any other appropriate Writ / Directions to the State of Karnataka / Respondent no. 1 and 3 to register FIR against the respondent No. 4 for the offenses under the Indian Penal Code and other enactment for indulging in committing wrongful confinement, assault and other offenses against the Petitioner as detailed in the complaint submitted by the Petitioner vide* ***Annexure-J****.*
>
> 2. *Issue a writ of mandamus directing respondent No. 1 and 3 to initiate disciplinary action against Respondent No. 4 for misusing the position and power and indulging in committing wrongful confinement, assault and other offenses against the Petitioner as detailed in the complaint submitted by the petitioner vide* ***Annexure-J.***

3. *Issue a Writ of Mandamus or any other appropriate Writs/Directions to the State of Karnataka/ Respondent number 1 to take immediate action against the Respondent No.4 police by initiating disciplinary action for violating the guidelines issued by the Hon'ble Apex Court by illegal arresting, detaining and assaulting the Petitioner and registering FIR in Crime No. 94/22 of Punjalkatte Police Station vide* ***Annexure-'D'*** *as detailed in the complaint submitted by the Petitioner vide* ***Annexure-J.***

4. *Issue appropriate Writs or directions to the State of Karnataka/ Respondent No 1 and 3 to hold enquiry against the Respondent No. 4 regarding the illegalities and lapses in the registration of criminal case against the Petitioner and take appropriate action against the Respondent no. 4 official for illegal arrest and registration of FIR as detailed in the complaint submitted by the Petitioner vide* ***Annexure-J.***

5. *Issue a writ of mandamus or any other appropriate writ or directions directing the Respondents (jointly and severally liable) to pay a compensation of Rs. 25,00,000/- to the petitioner for the sufferance due to atrocities committed by the Respondent No.4 vide* ***Annexure-J.***

6. *Grant such and further reliefs as this Hon'ble Court may deem fit to grant in the interest of justice and equity."*

This Court issued notice and sought the status of the complaint, even then the FIR was not registered. It is only on 05-01-2023, the FIR comes to be registered against the 4th respondent and one Prakash and another in Crime No.1 of 2023. Therefore, the first prayer of the petitioner has been met with, by registration of the crime against 4th respondent and others in FIR No.1/2023.

18. In view of the preceding analysis, it now becomes germane to consider the other prayers sought by the petitioner *(supra)*. In the light of the finding that the arrest of the petitioner was illegal and contrary to the guidelines laid down by ***ARNESH KUMAR*** as affirmed by subsequent judgments, the petitioner becomes entitled to grant of compensation for such illegal arrest and assault by the agents of the State *i.e.,* the police. Reference being made to the judgment of the Apex Court in the case of ***SUBE SINGH V. STATE OF HARYANA***[5] in the circumstances becomes apposite. The Apex Court has held as follows:

"…. …. ….

Compensation as a public law remedy

31. Though illegal detention and custodial torture were recognised as violations of the fundamental rights of life and liberty guaranteed under Article 21, to begin with, only the following reliefs were being granted in the writ petitions under Article 32 or 226:

(a) direction to set at liberty the person detained, if the complaint was one of illegal detention.

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[5] ***(2006) 3 SCC 178***

(b) direction to the Government concerned to hold an inquiry and take action against the officers responsible for the violation.

(c) if the enquiry or action taken by the department concerned was found to be not satisfactory, to direct an inquiry by an independent agency, usually the Central Bureau of Investigation.

Award of compensation as a public law remedy for violation of the fundamental rights enshrined in Article 21 of the Constitution, in addition to the private law remedy under the law of torts, was evolved in the last two-and-a-half decades.

32. In the Bhagalpur Blinding case [Khatri (II) v. State of Bihar [(1981) 1 SCC 627 : 1981 SCC (Cri) 228]] Bhagwati, J. (as he then was), speaking for the Bench, posed the following question while considering the relief that could be given by a court for violation of constitutional rights guaranteed in Article 21 of the Constitution: (SCC p. 630, para 4)

"[B]ut if life or personal liberty is violated otherwise than in accordance with such procedure, is the court helpless to grant relief to the person who has suffered such deprivation? Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty."

The question was expanded in a subsequent order in Bhagalpur Blinding case [Khatri (IV) v. State of Bihar [(1981) 2 SCC 493 : 1981 SCC (Cri) 503]] thus: (SCC p. 504, para 7)

"If an officer of the State acting in his official capacity threatens to deprive a person of his life or personal liberty without the authority of law, can such person not approach the court for injuncting the State from acting through such officer in violation of his fundamental right under Article 21? Can the State urge in defence in such a case that it is not infringing the fundamental right of the petitioner under Article 21, because the officer who is threatening to do so is acting outside the law and therefore beyond the scope of his authority and hence the State is not responsible for his action? Would this not make a mockery of Article 21 and reduce

it to nullity, a mere rope of sand, for, on this view, if the officer is acting according to law there would ex concessionis be no breach of Article 21 and if he is acting without the authority of law, the State would be able to contend that it is not responsible for his action and therefore there is no violation of Article 21. So also if there is any threatened invasion by the State of the fundamental right guaranteed under Article 21, the petitioner who is aggrieved can move the court under Article 32 for a writ injuncting such threatened invasion and if there is any continuing action of the State which is violative of the fundamental right under Article 21, the petitioner can approach the court under Article 32 and ask for a writ striking down the continuance of such action, but where the action taken by the State has already resulted in breach of the fundamental right under Article 21 by deprivation of some limb of the petitioner, would the petitioner have no remedy under Article 32 for breach of the fundamental right guaranteed to him? Would the court permit itself to become helpless spectator of the violation of the fundamental right of the petitioner by the State and tell the petitioner that though the Constitution has guaranteed the fundamental right to him and has also given him the fundamental right of moving the court for enforcement of his fundamental right, the court cannot give him any relief."

33. Answering the said questions, it was held that when a court trying the writ petition proceeds to inquire into the violation of any right to life or personal liberty, while in police custody, it does so, not for the purpose of adjudicating upon the guilt of any particular officer with a view to punishing him but for the purpose of deciding whether the fundamental right of the petitioners under Article 21 has been violated and the State is liable to pay compensation to them for such violation. This Court clarified that the nature and object of the inquiry is altogether different from that in a criminal case and any decision arrived at in the writ petition on this issue cannot have any relevance much less any binding effect, in any criminal proceeding which may be taken against a particular police officer. This Court further clarified that in a given case, if the investigation is still proceeding, the Court may even defer the inquiry before it until the investigation is completed or if the Court considered it necessary in the interests of justice, it may postpone its inquiry until after the prosecution was terminated, but that is a matter entirely for the exercise of the discretion of the Court and there is no bar precluding the Court from proceeding with the inquiry before it, even if the investigation or prosecution is pending.

34. In Rudul Sah v. State of Bihar [(1983) 4 SCC 141 : 1983 SCC (Cri) 798] the petitioner therein approached this Court under Article 32 of the Constitution alleging that though he was acquitted by the Sessions Court on 3-6-1968, he was released from jail only on 6-10-1982, after 14 years, and sought compensation for his illegal detention. This Court while recognising that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal, raised for consideration the important question as to whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for payment of money, as compensation for the deprivation of a fundamental right. This Court answered the question thus while awarding compensation: (SCC pp. 147-48, para 10)

"Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringement of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798] was followed in Bhim Singh v. State of J&K [(1985) 4 SCC 677 : 1986 SCC (Cri) 47] and Peoples' Union for Democratic Rights v. Police Commr. [(1989) 4 SCC 730 : 1990 SCC (Cri) 75]

35. The law was crystallised in Nilabati Behera v. State of Orissa [(1993) 2 SCC 746 : 1993 SCC (Cri) 527] . In that case, the deceased was arrested by the police, handcuffed and kept in police custody. The next day, his dead body was found on a railway track. This Court awarded compensation to the mother of the deceased. J.S. Verma, J. (as he then was) spelt out the following principles:

"[A]ward of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.

(SCC p. 758, para 10)

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... enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention.

... 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in

public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. (SCC pp. 762-63, paras 16-17)"

(emphasis supplied)

36. Dr. A.S. Anand, J., (as he then was) in his concurring judgment elaborated the principle thus:

"[C]onvicts, prisoners or undertrials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental rights by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody.

(SCC p. 767, para 31)

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The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by [the Supreme] Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood as it is generally understood in a civil action for damages under the private law but in the broader sense of

providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

(SCC pp. 768-69, para 34)"

37. In D.K. Basu v. State of W.B. [(1997) 1 SCC 416 : 1997 SCC (Cri) 92] this Court again considered exhaustively the question and held that monetary compensation should be awarded for established infringement of fundamental rights guaranteed under Article 21. This Court held:

"Custodial violence, including torture and death in the lock-ups, strikes a blow at the rule of law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law-enforcing officers is a matter of deep concern in a free society.

(SCC p. 424, para 9)

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Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become lawbreakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy. No civilised

nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? … The answer, indeed, has to be an emphatic 'No'.

(SCC p. 429, para 22)

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Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third-degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third-degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it."

38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure."

39. This takes us to the next question as to whether compensation should be awarded under Articles 32/226 for every violation of Article 21 where illegal detention or custodial violence is alleged."

(Emphasis supplied)

The Apex Court holds that the attitude to arrest and then proceed with the rest is despicable and has become a handy tool to police officers who lack sensitivity or act with oblique motive. The observations of the Apex Court are apt to be applied in the case at hand. The arrest of the petitioner has been in violation of Article 21 of the Constitution of India and the petitioner was compelled to face humiliation. The act of the police is not only in violation of the guidelines issued by the Apex Court right from the judgment in the case of ***D.K.BASU***, upto the judgment of ***SATENDAR KUMAR ANTIL***. There is flagrant violation of the mandate of the law enshrined under Sections 41 and 41-A of the Cr.P.C. The police can in no circumstance flout the law with such brazen proclivity. It is in these circumstances, the public law remedy which has been postulated by the Apex Court in several judgments as also in the judgments quoted hereinabove comes into play. The Constitutional Courts in exercise of their jurisdiction of public law remedy have taken note of the suffering and humiliation and have held those citizens who have faced such suffering and humiliation at the hands of the agents of the State to be entitled to grant of compensation, reserving liberty to claim further damages before a competent civil

Court. This has been regarded by the Apex Court as a redeeming feature. The arrest of the petitioner is held to be illegal in view of the preceding analysis and contrary to the guidelines issued by the Apex Court in the case of ***ARNESH KUMAR***, the petitioner becomes entitled to compensation to be paid by the State which is assessed at Rs.3,00,000/-. This will not come in the way of the petitioner claiming additional compensation in a competent civil Court in enforcement of a private law remedy.

19. The petitioner is an advocate, a responsible officer of any Court of law in which he would profess to practice. Being an Officer of any Court, it is the primary duty of any Advocate to assist the Court in dispensation of justice. This is the sacrosanct role assigned to an Advocate. Notwithstanding the petitioner being an Advocate, he is illegally detained and assaulted, even after bringing it to the notice of the police that he is an Advocate, an Officer of the Court. If an Advocate could be treated in the manner of what he has been meted out in the case at hand, a common man will not be able to bear the brunt of repetition of such treatment. It is, therefore, the perpetrators of such illegality and violators of law, as

is laid down by the Apex Court, cannot be left off the hook. They must be proceeded against both in a departmental inquiry, to fix accountability, and under the criminal law to deter any such iteration as, ***"injustice anywhere; is a threat to justice everywhere" - MLK Jr.***.

20. For the aforesaid reasons, I pass the following:

O R D E R

(i) Writ Petition is allowed in part.

(ii) The State shall pay a compensation of Rs.3,00,000/- (Rupees Three lakhs only) to the petitioner within two weeks from the date of receipt of a copy of this order.

(iii) The Director General and Inspector General of Police shall initiate a departmental enquiry against the 4th respondent and his cohorts or any other officer, after identifying those officers who have indulged in the act of illegal arrest and alleged assault on the petitioner.

(iv) The departmental enquiry shall be initiated within two weeks from the date of receipt of a copy of this order and if not already initiated. If already initiated, it shall be concluded within three months from the date of

receipt of a copy of this order. Till such time, suspension of the 4th respondent or any other officer shall not be revoked.

(v) The State shall recover the compensation paid to the petitioner (in terms of direction No.(ii)), from the salary of the officers found guilty in the departmental enquiry.

(vi) The State shall file separate compliance reports before the Registry of this Court of direction Nos.(ii), (iii), (iv) and (v).

(vii) The Superintendent of Police, Mangaluru is directed to supervise the investigation to be conducted in Crime No.1 of 2023 registered before Punjalkatte Police Station.

Sd/-
JUDGE

bkp
CT:MJ