



DIRECTOR GENERAL'S STANDING ORDER NO. 3 OF 2022

Subject :- Law of arrest and Hon'ble Supreme Court's Guidelines- Compliance with.

I] Introduction

Since the enactment of the Code of Criminal Procedure (Amendment) Act, 2008, along with a slew of orders made by the Hon'ble Supreme Court, the law of arrest in India has sought to curtail the scope of discretion by the police in taking persons in custody. The pith and the core of the law of arrest as enshrined in the Code of Criminal Procedure, 1973, (hereinafter the Code) and the law laid down by the Hon'ble Supreme Court is that the police officers while arresting the persons shall exercise the discretion on the touchstone of presumption of innocence of the accused and the safeguards provided under section 41 of the Code, since an arrest is not mandatory. The Hon'ble Supreme Court has held that if discretion is exercised to effect an arrest, there shall be procedural compliance. Procedure to arrest persons has been envisaged in Section 41B of the Code. The Code has also prescribed in Section 60A that no arrest shall be made except in accordance with the provisions of the Code or any other law for the time being in force providing for arrest.

Beginning with judgment in Joginder Kumar Vs State of U.P., the Hon'ble Supreme Court has issued a plethora of arrest guidelines which are also required to be implemented by the arresting officers. However, Arnesh Kumar Vs. State of Bihar is a landmark ruling which imposed checks and balances on the powers of the police before an arrest could be made. While expressing its anguish for lackadaisical implementation of Arnesh Kumar, it has again recapitulated the said guidelines in its recent judgment Satender Kumar Antil Vs. Central Bureau of Investigation and Anr. in July 2022. Besides, it has also cited the Delhi High Court ruling in case of Amandeep Singh Johar Vs. State of N.C.T. Delhi with approval which prescribed the procedure for operationalising the Arnesh Kumar ruling.

In view of the latest judicial pronouncement by the Hon'ble Supreme Court, it has been found necessary to consolidate and reiterate the procedure for arrests by the police officers in the State.

II] Hon'ble Supreme Court and High Court Orders:

(1) **Arnesh Kumar v. State of Bihar & Another (2014) 8 SCC 273**

After the judgments in Joginder Kumar v. the State of UP (1994) and D. K. Basu v. The State of West Bengal (1997), the Hon'ble Supreme Court held in Arnesh Kumar's case that there was need for caution in exercising the drastic power of arrest. While laying down the guidelines to exercise the power of

arrest by the police, it said that the existence of power to arrest is one thing, the justification for the exercise of it is quite another and therefore, the police officers must be able to justify the reasons thereof.

The Hon'ble Supreme Court also said that its endeavour in the judgment is to ensure that the police officers do not arrest accused unnecessarily and Magistrate does not authorize detention casually and mechanically. The Hon'ble Apex Court, thus, issued the following directions:

- i. 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.;
- ii. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);
- iii. 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;
- iv. The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms of aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;
- v. 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;
- vi. 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;
- vii. 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.
- viii. Authorizing detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

The Hon'ble Supreme Court further said that 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.**

It is evident that the guidelines issued by the Hon'ble Supreme Court in Arnesh Kumar's case are universally applicable to all arrests and not only to arrests likely to be made in cases registered under Section 498A IPC.

(2) Amandeep Singh Johar v. State of NCT of Delhi & Anr. (W. P. (C) 7608/2018)

As Sections 41B & 60A of the Code and guidelines laid down by the Hon'ble Supreme Court in Arnesh Kumar emphasises the significance of procedural compliance while effecting the arrests, the Hon'ble High Court framed fair and balanced rules with regard to issuance and service of notices under Section 41A and Section 160 of the Code.

The procedure thus prescribed by the Delhi High, "Procedure for issuance of notices/order by police officers under Section 41A", is enclosed as Annexure A.

Model Section 41A Cr. P. C. Notice is given at Annexure B.

(3) Satender Kumar Antil v. Central Bureau of Investigation & Anr. (Miscellaneous Application No. 1849 of 2021 in Special Leave Petition (Crl.) No. 5191 of 2021) (2021) 10 SCC 773.

While stressing the need for procedural compliance, the Hon'ble Supreme Court has once again turned its focus to the directions given in its earlier judgment viz. Arnesh Kumar v. State of Bihar. Besides, the Hon'ble Supreme Court has now cited the procedure prescribed in Amandeep Singh Johar case with approval in its judgment. It has also directed the States to issue a Standing Order in this regard for compliance by the field officers:

The pith and substance of the directions issued by the Hon'ble Apex Court is thus extracted below:

1. As Section 41 of the Code mandates the police officer to record his reasons in writing while making the arrest, he is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offense alleged is more than seven years, among other reasons.
2. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offense. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. **Any non-compliance would entitle the accused to a grant of bail.**
3. Strict compliance with Sections 41, 41A and 41B is made mandatory.
4. This Court has clearly interpreted Section 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.

5. We also expect the courts to come down heavily on the officers effecting arrest without due compliance of Section 41 and Section 41A. We express our hope that the Investigating Agencies would keep in mind the law laid down in Arnesh Kumar (Supra), 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.
6. Any dereliction on the part of police officers has to be brought to the notice of the higher authorities by the court followed by appropriate action.

(4) Siddharth v. the State of Uttar Pradesh (2021)(2022) 1 SCC 676:

In Siddharth, the Hon'ble Supreme Court has deprecated the practice of Court's insistence for the presence of the accused at the time of filing the charge sheet by the police. It has held that Section 170 of the Code does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the charge sheet.

III] Areas of Responsibility:

a) Police Station In Charge and the Investigation Officer:

Police station in charge and the investigating officer appointed by him, if he does not investigate the case himself, are primarily responsible for investigating the crimes by complying with the substantive and procedural requirements enshrined in various laws pertaining to the crime investigation. Needless to add that the decision to arrest an accused person during an investigation is a decision which requires to be exercised with due application of mind keeping in view the material and evidence gathered by the investigating officer. Once the investigation officer arrives at a decision to arrest an accused person, he has then to effect the arrest by complying with the procedure for arresting persons as enshrined in the Code read with various guidelines issued by the constitutional courts, which have now been consolidated in this Standing Order. In case the police station in charge himself is not investigating the case, then it will be incumbent upon him to supervise the arrests being effected by his subordinate officers. As such, the in charge and investigation officers have the following duties in this regard.

1. Assessing the requirement for arrest and recording satisfaction for arrest if it is decided to arrest the person.
2. Implications of Section 41 (1)(b) of Code.
3. Assessing the adequacy of evidentiary material for effecting arrest.
4. To ensure that reasons are recorded for not making an arrest as well as for making an arrest.
5. To ensure that if decision is taken to not to arrest, then the intimation is sent to the magistrate within the prescribed timeframe or the deadline is got extended from the CP/SP.

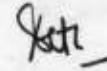
6. If it is decided to issue a notice for appearance to the accused person, the notice should be served within the prescribed timeframe or the period is got extended from the CP/SP.
7. Ensuring procedural compliance in accordance with Section 41B of the Code read with Section 60A of the Code and other provisions of Chapter V of the Code and guidelines issued by the Hon'ble Supreme Court from time to time, especially Arnesh Kumar guidelines.

b) Commissioners of Police, Superintendents of Police and SDPO:

In Arnesh Kumar guidelines, the Hon'ble Supreme Court has precisely delineated the role of the State Government, Police Officers and the Magistrates for arresting the persons. The Arnesh Kumar guidelines serialised as i, v, vi and vii above envisage role for the investigating officers and the superior police officers.

Apart from ensuring the provision of a checklist, the Commissioners of Police and Superintendents of Police have also been empowered to extend the deadline for communicating the decision not to arrest the accused by the investigating officer to the Magistrate or for extending the timeline for issuing appearance notice to the accused whom the investigating officer has decided not to arrest. These guidelines provide for an active role for the superior officers for ensuring that the arrests are justified and that the procedure laid down is followed.

As such, the compliance with these guidelines needs to be closely supervised by the CPs/SPs, DCPs, SDPOs and ACPs. It may be appreciated that the investigating officers are liable to disciplinary action or to contempt of the court for non-compliance of the guidelines and supervisory officers can also be held liable.



(Rajnish Seth)

Director General of Police,
Maharashtra State, Mumbai.

Encls: As above.

To,

All Commrs. Of Police (Including Rly.)
All Supdts. Of Police (Including Rly.)

Copy to,

Addl. Director General of Police, C.I.D., Maharashtra State, Pune
Addl. Director General of Police, Railway, Maharashtra State, Mumbai.
All Range Spl. Inspector General of Police / Dy. Inspector General of Police
Director General, Anti Corruption Bureau, Maharashtra State, Mumbai.(WCs)
The Commissioner, State Intelligence Department, Maharashtra State, Mumbai.
Addl. Director General of Police, Training / Traffic / E.O.W. / A.T.S. / P.C.R./
Force One / S.R.P.F., Maharashtra State, Mumbai.
Director, Maharashtra Police Academy, Nashik / Police Wireless, Pune.
Spl. Inspector General of Police, Cyber / P.A.W. / S.P.U., Maharashtra State, Mumbai
Spl. Inspector General of Police, Motor Transport Dept., Pune /A.N.O., Nagpur
Spl. Inspector General of Police, S.R.P.F., Pune / Nagpur
Director, Maharashtra Intelligence Academy, Pune / Dy. Director, D.T.S., Nashik
All Commndts. S.R.P.F., Group No. 1 to 16 / All Principals, Police Training School
Principal, U.O.T.C., Nagpur

Annexure A

Procedure for issuance of notices/order by police officers under Section 41A

- i. Police officers should be mandatorily required to issue notices under section 41A CrPC (in the prescribed format) formally to be served in the manner and in accordance with the terms of the provisions contained in Chapter VI of the Code.
- ii. The concerned suspect / accused person will necessarily need to comply with the terms of the notice under section 41 A and attend at the requisite time and place.
- iii. Should the accused be unable to attend at the time for any valid and justifiable reason, the accused should in writing immediately, intimate the investigating officer and seek an alternative time within a reasonable period, which should ideally not exceed period of four working days, from the date on which he /she were required to attend, unless he is unable to show justifiable cause for such non-attendance.
- iv. Unless it is detrimental to the investigation, the police officer may permit such rescheduling, however only for justifiable causes to be recorded in the case diary. Should the investigating officer believe that such extension is being sought to cause delay to the investigation or the suspect / accused person is being evasive by seeking time, (subject to intimation to the SHO / SP of the concerned Police Station/ District), deny such request and mandatorily require the said person to attend.
- v. A suspect / accused on formally receiving a notice under section 41A CrPC and appearing before the concerned officer for investigation / interrogation at the police station, may request the concerned IO for an acknowledgement.
- vi. In the event, the suspect / accused is directed to appear at a place other than the police station (as envisaged under Section 41A(1) CrPC), the suspect will be at liberty to get the acknowledgement receipt attested by an independent witness if available at the spot in addition to getting the same attested by the concerned investigating officer himself.
- vii. duly indexed booklet containing serially numbered notices in duplicate / carbon copy format should be issued by the SHO of the Police Station to the Investigating Officer. The Notice should necessarily contain the following details:
 - a) Serial Number
 - b) Case Number
 - c) Date and time of appearance
 - d) Consequences in the event of failure to comply
 - e) Acknowledgment slip.

- viii. Investigating Officer shall follow the following procedure:
- a) The original is served on the Accused / Suspect;
 - b) A carbon copy (on white paper) is retained by the IO in his / her case diary, which can be shown to the concerned Magistrate as and when required;
 - c) Used booklets are to be deposited by the IO with the SHO of the Police Station who shall retain the same till the completion of the investigation and submission of the final report under section 173 (2) of the Cr.P.C.
 - d) The Police department shall frame appropriate rules for the preservation and destruction of such booklets
 - e) Procedure booklets in format identical to the above prescription in guideline (vii) & (viii) with modifications having regard to the statutory provisions in the forms for the notices and acknowledgment shall be maintained.
 - f) Failure on the part of the IO to comply with the mandate of the provisions of the Cr.PC and the above procedure shall render him liable to appropriate disciplinary proceedings under the applicable rules and regulations as well as contempt of Court in terms of the directions of the hon'ble Supreme Court in the case of Armesh Kumar Vs. State of Bihar (2014) 8 SCC 273.
 - g) Publicity should be undertaken and pamphlets educating the public at large, should be issued by the DCP of all Districts.
 - h) The above information should be displayed at prominent places in Police stations, the subordinate courts and the High Court and made available to with the State and District Legal Services Authorities, to inform the public of their rights and recourses available to them.
 - i) Training programs be specially formulated for Police Officers and Judicial Officers to sensitize them towards effective compliance of Section 41A, 91, 160 and 175 of the CrPC.

Annexure B

Model form of Notice under Section 41A CrPC is reproduced herein below:

"MODEL SECTION 41A Cr.P.C. NOTICE"

Sr. No. -

Police Station -

Date:

To,

(Name of Accused / Noticee)

(Last Known Address)

(Phone No. / Email ID (if any))-

Notice under Section 41A Cr.P.C.

In exercise of the powers conferred under subsection (1) of section 41A of Cr.P.C., I hereby inform you that during the investigation of FIR / Case No -..... dated- u/s registered at Police Station- it is revealed that there are reasonable grounds to question you to ascertain facts and circumstances from you, in relation to the present investigation. Hence you are directed to appear before me at AM / PM on at Police Station.

You are directed to comply with all and/or the following directions:

- a) You will not commit any offence in future.
- b) You will not tamper with the evidences in the case in any manner whatsoever.
- c) You will not make any threat, inducement, or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing, such facts to the court or to the police officer.
- d) You will appear before the Court as and when required / directed.
- e) You will join the investigation of the case as and when required and will co-operate in the investigation.

- f) You will, disclose all the facts truthfully without concealing any part relevant for the purpose of investigation to reach to the right conclusion of the case.
- g) You will produce all relevant documents /material required for the purpose of investigation.
- h) You will render your full co-operation / assistance in apprehension of the accomplice.
- i) You will not allow in any manner destruction of any evidence relevant for the purpose of investigation / trial of the case.
- j) Any other conditions, which may be imposed by the Investigating Officer / SHO as per the facts of the case.

Failure to attend / comply with the terms of this Notice, can render you liable for arrest under Section 41A(3) and (4) of CrPC.

(Signature)

(Name and Designation)

.....

(affix seal)

ACKNOWLEDGEMENT

Sr. No.....

In compliance with the abovementioned notice dated issued under Section 41A Cr.P.C., the Noticee has appeared on..... from to the Noticee's presence has been recorded in the register to be maintained by the Police Station.

This acknowledgement is being issued in compliance with Section 41A CrPC. The documents produced by the noticee have duly been seized vide seizure memo / production memo (copy enclosed).

The noticee undertakes to continue to comply with any further notice that she / he may receive during the course of the present investigation.

(Signature of Accused / Noticee)

(Signature of IO)



महाराष्ट्र शासन
पोलीस महासंचालक कार्यालय, महाराष्ट्र राज्य
महाराष्ट्र राज्य पोलीस मुख्यालय, शाहीद भगतसिंग मार्ग, कुलाबा, मुंबई ४०० ००१

क्रमांक:पोमसं/२३/५४/Accused Arrest-S.C.guidelines/१३५/२०२१

मुंबई, दिनांक:-१७ ऑगस्ट, २०२२

संदर्भ:- (१) या कार्यालयाचे Law of arrest and Hon. Supreme Court Guidelines बाबतचे स्थायी आदेश क्रमांक ०३/२०२२ समक्रमांक दिनांक २० जुलई, २०२२ आणि समक्रमांकाचे पत्र दिनांक १०.८.२०२२
(२) मा उच्च न्यायालय, मुंबई खंडपीठ, मुंबई यांनी प्रविण ज्ञानेश्वर शिंदे विरुद्ध महाराष्ट्र शासन यांनी दाखल केलेला अॅन्टीसीपीटरी वेल ऑप्लीकेशन क्रमांक २१४२/२०२२ मध्ये दिनांक ०५ ऑगस्ट, २०२२ रोजी निर्गमित केलेले निर्देश.

विषय:- Law of arrest and Honourable Supreme Court's Guidelines-
Compliance with.

उपरोक्त संदर्भ व विषयाकडे राज्यातील सर्व पोलीस घटक प्रमुखांचे वैयक्तिक लक्ष वेधण्यात येत आहे. उक्त संदर्भ क्रमांक १ मध्ये नमूद केल्याप्रमाणे मा. सर्वोच्च न्यायालय यांनी पोलीस कडून गुन्ह्यात केल्या जाणा-या अटके बाबत सविस्तर मार्गदर्शक तत्वे स्थायी आदेश क्रमांक ३/२०२२ अन्वये राज्यातील सर्व पोलीस घटक प्रमुखांच्या आणि त्यांच्याकडून त्यांच्या अखत्यारित कार्यरत असलेल्या सर्व तपासी अधिका-यांना अवगत करण्यासाठी निर्गमित केले आहेत. उक्त संदर्भ क्रमांक ०१ मधील स्थायी आदेश क्रमांक ३/२०२२ हे या कार्यालयाचे संकेत स्थळ www.mahapolice.gov.in वर Flash या शिर्षका खाली व त्यातील इतर flash मध्ये दिनांक २१ जुलई २०२२ रोजीच प्रसिध्द करण्यात आले आहे. याची कृपया नोंद घ्यावी.

०२. उक्त संदर्भ क्रमांक ०१ मध्ये नमूद केलेल्या स्थायी आदेश क्रमांक ०३/२०२२ ची दखल मा. उच्च न्यायालयाने उक्त संदर्भ क्रमांक ०२ मध्ये नमूद केलेल्या प्रकरणात दिनांक ०५ ऑगस्ट, २०२२ रोजी निर्गमित केलेल्या आदेशात घेतली आहे. या आदेशाची प्रत देखील यासोबत राज्यातील सर्व पोलीस घटक प्रमुखांच्या माहितीसाठी जोडली आहे.

०३. त्यातील परिच्छेद क्रमांक ०६ आणि ०७ कडे राज्यातील सर्व पोलीस घटक प्रमुखांचे वैयक्तिक लक्ष वेधण्यात आहे. त्याच्या पालनार्थ खालीलप्रमाणे सूचना राज्यातील सर्व पोलीस घटक प्रमुखांना याद्वारे देण्यात येत आहे.

(अ) उक्त संदर्भ क्रमांक ०१ मध्ये नमूद केलेले स्थायी आदेश क्रमांक ०३/२०२२ हे सर्व पोलीस घटक प्रमुखांनी त्यांच्या अखत्यारितील प्रत्येक पोलीस अंमलदारांना त्यांच्याकडील लिखित पत्राद्वारे अवगत करावी. तसेच सदरील स्थायी आदेश हे राज्यातील सर्व पोलीस घटक प्रमुखांनी त्यांच्या संकेतस्थळावर प्रसिध्द करावी. त्यासाठी मा. उच्च न्यायालयाने १५ दिवसाचा कालावधी दिलेला आहे. याची कृपया नोंद घ्यावी.

(ब) उक्त संदर्भ क्रमांक ०१ नुसार निर्गमित केलेल्या स्थायी आदेश क्रमांक ०३/२०२२ चे राज्यातील सर्व पोलीस टाणे प्रभारी अधिकारी आणि प्रत्येक तपासी अधिका-यांनी काटेकोरपणे पालन करावे. त्याचे उल्लंघन झाल्याचे आढळून आल्यास, संबंधीत पोलीस अधिकारी तसेच त्यांचे पर्यवेक्षीय पोलीस अधिकारी हे शिस्तभंगविषयक कारवाईस पात्र ठरतील, याची नोंद देण्यात यावी.

संलग्न:- वरील प्रमाणे.

(मिलिद भारंबे)

विशेष पोलीस महानिरीक्षक, (कायदा व सुव्यवस्था),
पोलीस महासंचालक, महाराष्ट्र राज्य, यांचे करितां

प्रति,

सर्व पोलीस आयुक्त, (लोहमार्गसह)

सर्व पोलीस अधीक्षक, (लोहमार्गसह)

प्रत:- अपर पोलीस महासंचालक, राज्य गुन्हे अन्वेषण विभाग, महाराष्ट्र राज्य, पुणे

अपर पोलीस आयुक्त, लोहमार्ग, महाराष्ट्र राज्य, मुंबई

(कृमाप)

सर्व परिक्षेत्रिय विशेष पोलीस महानिरीक्षक व पोलीस उप महानिरीक्षक
महासंचालक, ला.प्र.वि., म.रा., मुंबई (सस्नेह)

आयुक्त, राज्य गुप्तवार्ता विभाग, महाराष्ट्र राज्य, मुंबई

अपर पोलीस महासंचालक, प्रशिक्षण, वाहतूक, आर्थिक गुन्हे विभाग, द.वि.प., ना.ह.सं., फोर्स वन, रा.रा.पो.ब., महाराष्ट्र
राज्य, मुंबई

संचालक, महाराष्ट्र पोलीस अकादमी, नाशिक, पोलीस दळणवळण व परिवहन, म.रा.पुणे,

विशेष पोलीस महानिरीक्षक, सायबर, पीएडल्ब्यू, एसपीयू, महाराष्ट्र राज्य, मुंबई

विशेष पोलीस महानिरीक्षक, रा.रा.पो.ब.पुणे, नागपूर

संचालक, महाराष्ट्र गुप्तवार्ता अकादमी, पुणे आणि उप संचालक, डीटीएस, नाशिक

सर्व समादेशक, रा.रा.पो.ब., गट क्रमांक ०१ ते १६ आणि सर्व प्राचार्य, पोलीस प्रशिक्षण केंद्र,
प्राचार्य, यु.ओ.टी.सी., नागपूर.



Government Of Maharashtra
Office of the Director General of Police, Maharashtra State
Maharashtra State Police Headquarters, Shahid Bhagat Singh Marg, Colaba, Mumbai 400 00

No.DGP/23/54/Accused Arrest-S.C. guidelines /135/2021

Mumbai, Date 10/08/2022

Subject :- Law of arrest and Hon'ble Supreme Court's Guidelines-
Compliance with.

This is with reference to Standing Order No. 3 of 2022 on the subject .
"Law of Arrest and Hon'ble Supreme Court's Guidelines-Compliance With".
issued vide No. DGP/23/54/Accused Arrest- S.C.guidelines/135/2021.
dated 20.07.2022.

2. Standing Order was issued pursuant to fresh guidelines disseminated by
the Apex Court regarding arrests in its judgment reported as Satender Kumar
Antil v. Central Bureau of Investigation & Anr. on July 11, 2022. Standing
Order broadly lists out the guidelines pronounced in major judicial orders by
the Supreme Court and Delhi High Court which are incremental in nature to
strengthen the arrest procedure contained in Chapter V of the Code of Criminal
Procedure, 1973, and it should be implemented in consonance with the Code or
any other special laws providing for arrest of the accused persons.

3. The Standing Order has unambiguously brought out the Supreme
Court's intent and purpose in issuing the guidelines which has reiterated that it
stands for the right of a person not to be subjected to arbitrary or unwarranted
arrest or detention, unless provided by law. It has further asseverated that no
one should be deprived of his liberty, except when it is justified or necessary.
It also provides for accountability mechanism for disciplining the police
officers who may disregard the law of arrest as it stands now.

4. Also, to ensure that its directions are implemented in their true spirit,
the Supreme Court has now directed in Satender Kumar Antil that all State
Governments, Union Territories and High Courts shall file affidavits / status
reports within a period of four months regarding the implementation of the
guidelines issued by it. Hence, the Unit Commanders are requested to strictly
monitor the implementation of the Standing Order and maintain records as
directed by the Supreme Court in Antil's case as the affidavit / status report
shall necessarily be substantiated with data provided by the units.

(Kulwant K. Sarangal)
Addl. Director General of Police (L.& O.),
Maharashtra State, Mumbai.

To,

All Commrs. Of Police (Including Rly.)
All Supdts. Of Police (Including Rly.)

2/-

Copy to,

Director General, Anti Corruption Bureau, Maharashtra State, Mumbai.(WCs)
The Commissioner, State Intelligence Department, Maharashtra State, Mumbai.
Addl. Director General of Police, C.I.D., Maharashtra State, Pune
Addl. Director General of Police, Railway/ Training / Traffic / E.O.W. / A.T.S. /P.C.R./
Force One / S.R.P.F., Maharashtra State, Mumbai.
All Range Spl. Inspector General of Police / Dy. Inspector General of Police
Spl. Inspector General of Police, Cyber / P.A.W. / S.P.U., Maharashtra State, Mumbai
Spl. Inspector General of Police, Motor Transport Dept., Pune /A.N.O., Nagpur
Spl. Inspector General of Police, S.R.P.F., Pune / Nagpur
Director, Maharashtra Police Academy, Nashik / Police Wireless, Pune.
Director, Maharashtra Intelligence Academy, Pune / Dy. Director, D.T.S., Nashik
All Commndts. S.R.P.F., Group No. 1 to 16.
All Principals, Police Training School
Principal, U.O.T.C., Nagpur.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2142 OF 2022

Pravin Dnyaneshwar Shinde .. Applicant
Versus
The State of Maharashtra .. Respondent

...

Saurabh More for the Applicant.

S.V. Gavand, A.P.P. for the State/Respondent.

Shri Sirsat, PSI, Bhayander, Police Station

...
CORAM: BHARATI DANGRE, J.
DATED : 05th AUGUST, 2022

P.C:-

1. Learned APP has placed on record the Standing Order No.3 of 2022 dated 20/07/2022, issued by the Director General of Police Maharashtra State, Mumbai, in regard to the subject "Law of Arrest" and Hon'ble Supreme Court Guidelines - "compliance with".
2. By referring to the decision of the Hon'ble Supreme Court in case of *Arnesh Kumar v/s State of Bihar & Anr.*, (2014) 8 SCC 273 and the decision in case of *Satenderkumar Antil v/s Central Bureau of Investigation and anr.* (2021) 10 SCC 773, the Director General of Police, Maharashtra State, Mumbai, has issued Guidelines for all the Police Station In-charge and the Investigating Officers and has made it imperative to follow the same, as a duty imposed upon them.

The said Guidelines contemplate assessing the requirement of arrest and recording satisfaction for arrest. It also contemplates that if the Investigating Officer decides to arrest the person, by assessing the adequacy of evidentiary material for effecting the arrest, he shall ensure recording of the reasons for not making an arrest as well as reasons for making an arrest.

3. The area of responsibility for the Police Station Incharge and the Investigating Officer is set out in the following words:

“Needless to add that the decision to arrest an accused person during an investigation is a decision which requires to be exercised with due application of mind keeping in view the material and evidence gathered by the Investigating Officer. Once the Investigation Officer arrives at a decision to arrest an accused persons, he has then to effect the arrest by complying with the procedure for arresting persons as enshrined in the Code read with various guidelines issued by the Constitutional courts, which have now been consolidated in this Standing Order. In case the police station in charge himself is not investigating the case, then it will be incumbent upon him to supervise the arrests being effected by his subordinate officers. As such, the in-charge and investigation officers have the following duties in this regard.



1. *Assessing the requirement for arrest and recording satisfaction for arrest if it is decided to arrest the person.*
 2. *Implications of Section 41(1)(b) of Code.*
 3. *Assessing the adequacy of evidentiary material for effecting arrest.*
 4. *To ensure that reasons are recorded for not making an arrest as well as for making an arrest.*
 5. *To ensure that if decision is taken to not to arrest, then the intimation is sent to the magistrate within the prescribed timeframe or the deadline is got extended from the CP/SP.*
 6. *If it is decided to issue a notice for appearance to the accused person, the notice should be served within the prescribed timeframe or the period is got extended from the CP/SP.*
 7. *Ensuring procedural compliance in accordance with Section 41B of the Code read with Section 60A of the Code and other provisions of Chapter V of the Code and guidelines issued by the Hon'ble Supreme Court from time to time, especially Arnesh Kumar guidelines.”*
4. The Commissioner of Police, the Superintendent of Police and SDPOs are also cast with the responsibility to

bring the above directions to the notice of the Investigating Officers and the superior police officers. They are also cast with the following responsibility :-

“Apart from ensuring the provision of a checklist, the Commissioners of Police and Superintendents of Police have also been empowered to extend the deadline for communicating the decision not to arrest the accused by the investigating officer to the Magistrate or for extending the timeline for issuing appearance notice to the accused whom the investigating officer has decided not to arrest. These guidelines provide for an active role for the superior officers for ensuring that the arrests are justified and that the procedure laid down is followed.

As such the compliance of these guidelines needs to be closely supervised by the Commissioner of Police/ Superintendent of Police, Dy. Commissioners of Police, SDPOs, ACPs. It may be appreciated that the Investigating Officers are liable for disciplinary action or the contempt of Court for non-compliance of the Guidelines and the supervisory officers can also be held liable.

5. The aforesaid guidelines being issued by the Director General of Police in the backdrop of the Plethora of arrest, guidelines issued by the Hon'ble Supreme Court, but failure to implement the said guidelines and it was found necessary to consolidate and reiterate the procedure for arrest by the Police Officers in the State.

6 Hopefully, each and every police official of the State Government has been communicated with the said Guidelines and, if not, let the respective Commissioners, Superintendent of Police, and SDPOs ensure that the Guidelines, are communicated to every Police Station In-Charge and Investigating Officer by publishing it on the website of the State Government as well as website of the Police Department. Time of 15 days is granted for circulating the Guidelines in an effective manner. On completion of 15 days, each Police Officer In-Charge and the Investigating Officer shall adhere to the Guidelines as directed, and their failure to do so, will call for a disciplinary action.

7 The guidelines shall be circulated to all the Police Station In-Charge and the Investigating Officers in the State of Maharashtra on or before 30/08/2022 and it is made clear that failure to abide by the said Guidelines, shall invite the disciplinary action against the said officer as well as the superiors.

8 As far as the present application is concerned, since the offence invoked is under the provisions of Section 498-A of the IPC, the Investigating Officer shall issue a notice under section 41 A of the Cr.P.C. to the applicant which shall be abided by. The Investigating Officer, shall follow the mandate of section 41A of the Cr.P.C.

9 This order shall be brought to the notice of the Director General of Police, Maharashtra State, Mumbai, who shall ensure the compliance of the directions as above.

10 The application is disposed off.

(SMT. BHARATI DANGRE, J.)