

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 135/2017**

Date of Decision: February 16th, 2017

UDIT RAJ POONIA Petitioner
Through: Mr. Viraj R. Datar, Mr. Bijan Singh,
Mr. Rajtilak Guha Roy and Mr. Jahangir
Ahmed, Advocates.

versus

STATE (GOVT OF NCT OF DELHI) Respondent
Through: Mr. Panna Lal Sharma, Additional Public
Prosecutor for the State with Mr. S.B.K.
Singh, Special Commissioner, Mr. Satish
Golcha, Special Commissioner, Inspector
Manish SHO and ASI Devender Kumar,
Police Station Madhu Vihar, Delhi.
Mr. Sudhir Nandrajog, Senior Advocate
with Mr. Harsh K. Sharma, Mr. Manish
Tiwari, Ms. Ragini, Ms. Vaibhavi Sharma,
Mr. Rohit Gaur, Mr. Raghav Ghei,
Ms. Mehak Nakra, Mr. Ajay Arora,
Mr. Kapil Dutta, Ms. Diksha Lal,
Ms. Surbhi Gupta, Advocates for
Complainant.

CORAM:
HON'BLE MR. JUSTICE P.S. TEJI

P.S. TEJI, J

1. The present application has been filed under Section 438 of the Code of Criminal Procedure by the petitioner/accused for the grant of anticipatory bail in FIR No.413/2016, under Sections 498A/406/34 IPC, Police Station Madhu Vihar.
2. The facts emerging from the record are that the complainant

Priyanka Sharma had made a complaint to the police alleging therein that she got married with accused Udit Raj Puniya on 13.04.2010 according to Hindu rites and ceremonies. In the marriage, the father of the complainant spent about Rs.75 lakhs including 100 tolas of gold, a car and other expenses due to pressure of her in-laws. After four days of marriage, all the stridhan articles were taken by the father-in-law and other in-laws of the complainant on the pretext that the same would be kept in safe custody. It was further alleged that the husband and mother-in-law of the complainant asked her to bring Rs.2 crores from her parents for opening a petrol pump. The complainant and her husband went to Goa where her husband asked her to pay for the trip. The husband had a discussion with the complainant about opening a petrol pump for his elder brother. The complainant became pregnant and one day, she was pushed out of her matrimonial house. Thereafter, the complainant stayed with her parents and all the expenses relating to her treatment were borne by her parents. On 14.02.2011, the complainant was blessed with a girl child. The in-laws of the complainant were not happy with the birth of a girl child. Husband of the complainant refused to keep her and never supported his daughter.

3. Initially, the complaint was made by the complainant to the

Crime Against Women Cell and when the mediation between the parties failed, the matter was referred for registration of FIR.

4. Arguments advanced by the learned counsel for the petitioner, learned Additional Public Prosecutor for the State and learned Senior Counsel for the complainant were heard.

5. Arguments advanced by the learned counsel for the complainant are that the marriage of the petitioner with the complainant was a simple marriage in which no demand was made by the petitioner and his family members. Only few gifts were given by the relatives and friends of both the parties. At the time of engagement, father of the complainant gave a cheque of Rs.10 lakhs which was never deposited as the petitioner did not want anything from the complainant. Even the father of the petitioner transferred a sum of Rs.9,98,500/- to the bank account of the complainant as her father wanted to purchase a property. The complainant used to fight with the petitioner on trivial issues and she hardly remained with the petitioner for six months. All the stridhan articles including the car have already been handed over to the complainant.

6. On the other hand, learned APP for the State opposed the bail application on the ground that all the stridhan articles have not been returned to the complainant by her husband and in-laws. A

raid was conducted at the house of the petitioner but he was not found there and thus he is evading arrest. It is further submitted that the custodial interrogation of the petitioner is required for the purpose of investigation as the allegations are serious in nature and there is strong possibility that he might jump bail.

7. Learned APP for the State has informed that during the pendency of the instant bail application, a raid was conducted and some alleged articles were recovered from the persons other than the accused/applicant.

8. After going through the rival contentions of both the sides, this Court has gone through various aspects involved in the instant case.

BAIL IN MATRIMONIAL CASES

9. Article 21 of the Constitution of India reads as under :

“Protection of life and personal liberty.-
No person shall be deprived of his life or personal liberty except according to procedure established by law.”

10. The important components of Article 21 are the deprivation of life, deprivation of personal liberty and the procedure established by law. The scope of Article 21 demands that the procedure must not only be established by law but it must be just, fair and reasonable meaning thereby it shall be in conformity with

justice, fairness and reasonableness. This Article becomes relevant when a person is arrested and it remains relevant so long he remains subject to a criminal prosecution which may result into deprivation of his personal liberty. This Article also retains its relevance when a person has already become a prisoner.

11. V.R. Krishnaiyer, J. has observed :

“The significance and sweep of Art. 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Art. 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice to the individual involved and society affected.”

[Gudikanti Narasimhulu and Ors. V. Public Prosecutor, High Court of Andhra Pradesh]

12. The procedure adopted in the matrimonial cases is that the complainant/aggrieved first makes the complaint before the Crime Against Women Cell where attempts are made to reach to an amicable settlement. When such an amicable agreement fails between the parties, the FIR is registered on the recommendation of the Crime Against Women Cell.

13. The Hon'ble Apex Court in the case of ***Joginder Kumar vs. State of UP AIR 1994 SC 1349*** has dealt with Article 21 of the Constitution of India with regard to arrest of an accused. This judgment was further relied upon in the case of ***D.K. Basu vs. State of West Bengal (1997) 1 SCC 216*** and guidelines were issued by the Hon'ble Apex Court, which are reproduced as under :

(i) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designation. The particular of all such personnel who handle interrogation of the arrestee must be recorded in a register.

(ii) That the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(iii) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(iv) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aids Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(v) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(vi) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclosed the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(vii) The arrestee should, where he so request, be also examined at the time of his arrest and major and minor injuries, if any present on his /her body, must be recorded at that time. The Inspector Memo' must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(viii) The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctor appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(ix) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.

(x) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the

interrogation.

(xi) A police control room should be provided at all district and State headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

14. In view of the increasing incidence of violence and torture in custody, the Supreme Court of India had laid down the above 11 specific requirements and procedures that the police and other agencies have to follow for the arrest, detention and interrogation of any person. The judgment lays down the manner in which a person can be detained or arrested. The Apex Court laid stress that transparency of action and accountability are the two possible safeguards which the Court must insist upon.

15. In compliance of the directions issued by the Hon'ble Apex Court in the case of **Joginder Kumar** (supra) and in the case of **D.K. Basu** (supra), Delhi Police issued **Standing Order No.330/2008** regarding arrest of an accused. Same is reproduced as under :

“The Hon'ble Supreme Court of India in the matter of Joginder Kumar Vs State of UP (CrI. WP No. 9 of 1994) made the following observations:-

1. 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. The Police Officer must be able to justify the arrest apart from his power to do so.

2. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person..... 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.

3. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified.

The following requirements also prescribed in the judgement:-

1. An arrested person being held in custody is entitled, if he so requests to have one friend relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.

3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22 (1) and enforced strictly.

*The Hon'ble Supreme Court of India in the case of **D.K. Basu Vs. State of West Bengal** issued the following requirements to be followed in all cases of arrest or detention:-*

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register and the case diary.

2. The police officer carrying out the arrest of

the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or the person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside of the district or town through the Legal Aid Organization in the District and the police station of the area concerned telephonically/ telegraphically within a period of 8 to 12 hours after the arrest.

5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police affecting the arrest and its copy provided to the arrestee.

8. The arrestee should be subjected to medical

examination by a trained doctor after every 48 hours during his detention is custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

10 The arrestee may be permitted to meet his lawyer during interrogation, though not through out the interrogation.

11. A Police control room should be provided at all district and state headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

The Supreme Court of India also directed that failure to comply with the said requirements shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of Court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter. These instructions are to be notified at every police station at a conspicuous place.

*The Delhi High Court in Crl. M (M) 3875/2003 in ‘**Court On Its Own Motion Vs CBI**’ made the following observations/ directions regarding arrests under section 498A/406 IPC. The Court observed that Sections 498A/406 IPV which “are much abused provisions and exploited by the police and the victims to the level of absurdity.....every relative of the husband, close or distant, old or minor is arrested by the police.....unless the allegations are very serious nature and highest magnitude arrest should always be avoided”.*

In a recent judgement in criminal appeal

Nos. 696/2004, 748/2004, 787/2004 and 749/2004 pronounced on 1.11.2007, the Delhi High Court observed that “..... In all these cases in the name of investigation, except recording statement of complainant and her few relatives nothing is done by police. The police does not verify any circumstantial evidence nor collect any other evidence about the claims made by the complainant. No evidence about giving of dowry or resources of the complainant’s family claiming spending of huge amounts is collected by the police. This all is resulting into gross misuse of the provisions of law.....”.

The Hon’ble Mr. Justice Kailash Gambhir, High Court of Delhi, in Bail Application No.1627/2008 titled “**Chander Bhan & Anr. Vs State**” passed, inter-alia, the following guide lines to be strictly followed by the police authorities:-

“(A) (i) No case under Section 498-A/406 IPC should be Registered without the prior approval of DCP/Addl. DCP.

(ii) Arrest of main accused should be made only after thorough investigation has been conducted and with prior approval of the ACP/DCP.

(iii) Arrest of the collateral accused such as father-in-law, mother-in-law, brother-in-law or sister-in-law etc. should only be made after prior approval of DCP on file.

(B) Police should also depute a well trained and a well behaved staff in all the crime against women cells especially the lady officers, all well equipped with the abilities of perseverance, Persuasion, patience and forbearance.

(C) FIR in such cases should not be registered in a routine manner.

(D) The endeavour of the police should be to scrutinize complaints very carefully and then register FIR.

(E) The FIR should be registered only against those persons against whom there are strong allegations of causing any kind of physical or mental cruelty as well as breach of trust.

(F) All possible efforts should be made, before

recommending registration of any FIR, for reconciliation and in case it is found that there is no possibility of settlement, then necessary steps in the first instance be taken to ensure return of stridhan and dowry articles etc. by the accused party to the complainant.”

16. After the law laid down by the Hon’ble Apex Court with respect to framing guidelines regarding arrest of an accused and the consistent view adopted by this Court, amendment in the Code of Criminal Procedure was made by the Amendment Act of 2009 in Section 41 of the Cr.P.C. It reads :

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) who commits, in the presence of a police officer, a cognizable offence;

(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) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(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.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;

(c)who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d)in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e)who obstructs a police officer while in the execution of his duty, or who has escaped, or

attempts to escape, from lawful custody; or

(f)who is reasonable suspected of being a deserter from any of the Armed Forces of the Union; or

(g)who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h)who, being a released convict, commits a breach of any rule made under Sub-Section (5) of section 356; or

(i)for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2)Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

17. The amendment to Section 41 Cr.P.C. classifies the power of police to arrest the accused persons involved in offences punishable with imprisonment up to seven years. As per the amendment, the Police Officer is empowered to arrest a person in

all cases of cognizable offences only when it is committed in his presence, in all other situations, if the offence is punishable with imprisonment less than 7 years, the amendment requires the police officer to record reasons in writing prior to effecting arrest and the reasons may be to prevent commission of further crime; for proper investigation; to prevent the tampering of evidence; to prevent the accused 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; to ensure the presence of the accused in court.

18. Section 198A of the Cr.P.C. provides for protection to an accused in matrimonial cases. It reads :

“198A. Prosecution of offences under section 498A of the Indian Penal Code.- No Court shall take cognizance of an offence punishable under section 498A of the Indian Penal Code except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father’s or mother’s brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.”

19. The Delhi Police in order to streamline the investigation and conclude the same in an expeditious manner, issued certain directions vide Standing Order No.444/2016. The said Standing Order was mandated to supersede the previous Standing Order

No.440/2015. The said guidelines which read as under are an inherent reminder to the police department to carry out investigations in a swift manner. ***Standing Order No.444/2016*** reads :

STANDING ORDER No.444/2016

INSTRUCTIONS FOR EXPEDITIOUS INVESTIGATION OF CASES IN DELHI POLICE

INTRODUCTION

The Hon'ble High Court of Delhi in Criminal M.C. No.2621 of 2012 titled 'Kanwar Sain Gupta Vs State' has observed that investigation of cases are sometimes not concluded in an expeditious manner. Moreover, Section 173 Cr.P.C. also provides that investigation of any case shall be completed without unnecessary delay and as soon as it is completed the police shall forward the Final Report to the Magistrate, empowered to take cognizance. Delhi Police as a part of the 'Criminal Justice System' is committed to provide speedy justice to enforce the right to life with dignity guaranteed in Article 21 of the Constitution of India and implement existing laws as well as directions of the Hon'ble Courts.

INSTRUCTIONS:

In order to ensure speedy investigation of cases, the following instructions are issued for meticulous compliance:

- 1. The concerned Assistant Commissioner of Police (ACP), immediately after registration of FIR, shall issue a check-list containing detailed instructions including timeline to be followed by the Investigating Officers during the course of investigation.*
- 2. The Investigating Officers shall collect the relevant evidences/ information by summoning the concerned persons at the earliest under the provision of section 91/160 Cr.P.C. In case of*

disobedience of the notice and non-cooperation by the concerned persons, the Investigating Officers, after obtaining permission from the concerned Deputy Commissioner of Police (DCP), shall take steps for initiation of action against the defaulters as envisaged in Section 174/175/176/177/179 I.P.C.

3. *The Investigating Officers/SHO concerned shall deposit all the relevant exhibits/documents for examination with the Forensic Science Laboratory (FSL) as early as possible, within 07 days from the date of its collection. Further, in case of biological samples such as blood, semen, etc., which putrefy/degenerate at a rapid rate, should be sent on the same day/next day of collection.*
4. *While conducting investigation, Section 467/468 of I.P.C. (in cases where it was not invoked at the time of registration of FIR) shall be added with the prior permission from the concerned DCP. The supervisory officers shall ensure that the addition of sections is justified, and has not been done for the purpose of delaying investigation.*
5. *Exhibits of cases relating to economic offences (Criminal Breach of Trust, Cheating & Forgery) and other than economic offences shall be forwarded to FSL after obtaining permission from the concerned DCP and concerned ACP, respectively. The concerned Supervisory Officer shall ensure that the Investigating Officers/SHOs forward the essential and relevant material as well as queries to the FSLs.*
6. *Any document having finger-prints as well as signatures of the parties/executors should be forwarded to the Finger Print Bureau (F.P.B.) as comparison of finger-prints is an easy, less time consuming and more authentic process. It shall be ensured by the supervisory officers that in all such cases, appropriate legal action including arrest, chargesheet, etc., is taken on the basis of finger-print expert's opinion.*

However, if needed, further examination by the FSL/handwriting expert may also be got conducted, subsequently and report thereof may be filed through a supplementary chargesheet.

- 7. Regular follow-up with the FSLs should be made by the Investigating Officer/SHO to provide any other assistant/material required for examination. In case, the Investigating Officer is transferred out, the concerned SHO/Supervisory Officer shall depute a responsible officer for the same and ensure compliance.*
- 8. If the opinion from FSL is not received within a reasonable time frame, the Investigating Officer/SHO shall bring the matter to the notice of the concerned DCP so that matter can be taken up with the FSL authorities immediately.*
- 9. On receipt of information from the FSL that the report is ready, the Investigating Officer/SHO shall collect the same immediately. It should be scrutinized promptly and put-up by the Investigating Officer before the concerned Supervisory Officer for further action, within 15 days.*
- 10. The FSL opinion shall be expeditiously submitted in the Court concerned by the Investigating Officer/SHO through a chargesheet, after obtaining the requisite administrative approvals.*
- 11. Co-accused who cannot be traced and arrested should be declared Proclaimed Offenders and the case be chargesheeted after completing investigation.*
- 12. The cases, where sufficient evidence to chargesheet the case has been collected, will be forwarded to the Court for trial without delay. The FSL reports and other evidences collected subsequently should be filed before the Court through supplementary chargesheet.*
- 13. The formal investigations in Economic Offences are necessary but sometimes it is used as a tool to resolve the primarily civil disputes between the parties. There may be hairline difference between a matter of civil nature and cases*

falling under the Criminal Breach of Trust and Cheating. Therefore, both the parties and their documents must be examined thoroughly to arrive at a conclusion as early as possible. Expeditious investigation is need of the hour but it should be ensured by the supervisory officers that no erroneous decision under the garb of the same is taken. However, in all those cases, wherein the investigation has established the commission of criminal offences or otherwise, appropriate steps be taken for concluding the investigation and filing the Final Report at the earliest.

14. *The DCP concerned shall ensure that for improving the quality of investigation, the workload of an Investigating Officer should not be excessive.*
15. *It is a tendency of the accused not to co-operate in investigation, if he/she gets bail and the investigation is delay. In all such cases, the concerned Investigating Officer shall immediately take steps to move an application for cancellation of bail.*
16. ***Guidelines/instructions issued by the Hon'ble Supreme Court of India in the matter of 'Arnesh Kumar Vs. State & another', regarding arrest of accused persons be meticulously complied with by the Investigating Officers.***

As laid down by the Hon'ble Apex Court, the Investigating Officers shall not automatically arrest a person but have to satisfy himself about the necessity of arrest. Further, in all cases punishable with imprisonment for a term up-to 7 years, the decision not to arrest an accused shall be forwarded to the concerned court within 2 weeks from the date of the institution of the case. Notice for appearance of an accused shall also be served within 2 weeks from the date of institution of the case. The period of 2 weeks can be extended by the DCP concerned for reasons to be recorded in writing.

17. *Investigation of the cases be concluded at the earliest and it shall be ensured that no undue benefit is taken by the accused u/s 468 CrPC (limitation of taking cognizance) & u/s 167(5) CrPC (investigation in summons-cases to be completed within 6 months from the date of arrest). The detailed instructions vide Standing Order No.340/2009, issued in this regard should be complied with.*
18. *In case the accused persons are arrested and are in judicial custody, the Investigating Officers and ACP shall ensure that investigation of the case is completed expeditiously and chargesheets are filed within 60/90 days of arrest, as per the requirements of Section 167(2)(a) of Cr.P.C.*
19. *In such cases, the chargesheets should be sent to the Prosecution Branch well in time as far as possible within 45 days (in case chargesheet is to be filed before 60 days of arrest) or 75 days (in case chargesheet is to be filed before 90 days of arrest). Regular follow-up with the concerned A.P.P./Prosecution Branch shall be made by the Investigating Officer to provide any other assistance required for scrutiny.*
20. *If the case file is not scrutinized by the Prosecution Branch within 15 days, the Investigating Officer shall bring the matter to the notice of the concerned ACP/DCP so that matter may be taken up with the Director of Prosecution, immediately.*
21. *The ACsP must personally check the investigation of the cases to ensure that the same is being promptly and fairly conducted by the Investigating Officers. The DCP shall also ensure that investigation is being properly conducted by the Investigating Officers as well as monitored by the ACsP. The Investigating Officer shall endeavour to complete the investigation within one year.*
22. *In case investigation of a case relating to economic offences cannot be completed within one year, the Investigating Officer/SHO shall*

seek further time for investigation from the DCP concerned alongwith reasons of delay, whereas in cases relating to other than economic offences, the Investigating Officer/ SHO shall seek further time for investigation from the ACP concerned alongwith reasons of delay. The concerned Supervisory Officer (DCP/ACP), shall examine the reason of delay as well as the case file and after satisfying himself that sufficient steps are taken by the I.O. to complete the investigation, shall accord the same or take necessary corrective steps. In case there is undue delay in completion of investigation, the DCP/ACP concerned shall fix the responsibility of concerned and initiate appropriate action.

23. *Similarly, if the investigation of any case (other than economic offences) cannot be completed within two years, the concerned ACP shall seek further time for investigation from the concerned Dy. Commissioner of Police (DCP). The DCP shall then examine the reasons of delay, reports and case file and shall accord permission only after satisfying himself that further investigation is essential and reasonable steps have been taken by the I.O. and other supervisory officers to complete the investigation. In case, there is undue delay in completing the investigation, then the DCP shall fix responsibility for delay by concerned officers and take appropriate action.*
24. *In the same way, if the investigation of any case cannot be completed within three years, the concerned DCP shall seek further time for investigation from the concerned Joint Commissioner of Police (Jt. CP). The Jt. CP shall then examine the reasons of delay, reports and case file and shall accord permission only after satisfying himself that further investigation is essential and reasonable steps have been taken by the I.O. and other supervisory officers to complete the investigation. In case there is undue delay in completing the investigation,*

then the Jt. CP shall fix responsibility for delay by concerned officers and take appropriate action.

25. *In case the delay in investigation is noticed at any of the above stages, a monthly report till the finalization of the case shall be submitted by the concerned Asstt. Commissioner of Police to the Dy. Commissioner of Police with reason of pendency and steps taken to expedite investigation during the last month, for onward transmission/examination by the other supervisory officers.*

Non compliance of these instructions will be viewed adversely and appropriate disciplinary action will be initiated against the concerned officers.

20. As per the guidelines/directions contained in the judgment of Hon'ble Apex Court in the case of **Joginder Kumar** (supra) and **D.K. Basu** (supra) and the consistent view taken by this Court in various cases, such directions have been issued to avoid undue harassment to an accused. Standing orders nos.330/2008 and 444/2016 have been issued by the Delhi Police vide which directions have been issued to the Investigating Officers not to unnecessarily harass the accused persons. Every person needs to be protected from undue harassment and detention for hidden considerations. The arrest of the main accused in a matrimonial case could be made only after obtaining permission of the ACP and the other accused are to be arrested only after obtaining permission from the DCP. As per the instructions issued, the Investigating

Officers are firstly required to look into whether the alleged articles are in existence rather than to rush for the arrest of the accused and as a last resort, in the given circumstances, to arrest the accused with the prior permission of the concerned ACP/DCP. The standing orders are mandatory in nature.

21. Certain directions were issued by the Hon'ble Apex Court in the case of *Joginder Kumar* (supra) regarding arrest to be made by the police officers. It has been observed that the police officer must justify the arrest after arriving at a reasonable satisfaction after investigation as to the legitimacy of the complaint. The said judgment has been relied upon in the case of *D.K. Basu's* case (supra) in which guidelines regarding arrest, investigation and interrogation of an accused have been issued such as manner of arrest, right of an accused during arrest, investigation and interrogation, his right to be medically examined and to be counselled by his lawyer during the period of investigation. Several precautions have been issued by the Hon'ble Apex Court after the arrest of an accused by the above said judgments.

22. It is due to issuance of guidelines by the Hon'ble Apex Court, Standing Order No.330/2008 was issued by the Delhi

Police. This Standing Order was issued in compliance of directions contained in *Joginder Kumar's* case (supra), *D.K. Basu's* case (supra) and other judgments/orders of this Court. It is after the issuance of Standing Order No.330/2008, the police officers were directed that no case under Section 498A/406 IPC should be registered without the approval of DCP/Additional DCP. It was also directed that the arrest of the main accused or the husband should be made only with prior approval of the ACP/DCP, whereas the arrest of the other in-laws of the bride should be made only after obtaining prior permission of the DCP. Before according approval for the arrest of the main accused in matrimonial cases, the ACP needs to see whether there is any case property which is to be required to be recovered and whether there is reasonable and justifiable grounds for the arrest of the main accused for effecting recovery of any such article.

23. This Court is of the considered opinion that in matters of matrimonial cases, the Investigating Officer is required to first make out whether any article is to be recovered. In case, he is of the view that any article is to be recovered then he is to decide whether the custodial interrogation of any of the accused is required for the purpose of recovery of article. Without reaching to

the conclusion with regard to recovery of article, whether it is stridhan article or any other article, the Investigating Officer is not to arrest the person for the recovery of the same.

24. Similarly, the bail application ought not to be rejected for settling the scores between the parties.

25. As per the discussion made above, this Court is of the view that :

****Provision of Section 41 Cr.P.C. and the guidelines issued vide Standing Order Nos.330/2008 and 444/2016 are mandatory in nature and must be complied with.***

****The DCP/ACP shall ensure that the alleged articles are in existence and the recovery/seizure could take place without the arrest. In other words, that arrest is the only mode in the facts and circumstances to effect the recovery before granting the sanction to arrest.***

****Similarly, the Courts while considering the bail under Section 437, 438, 439 Cr.P.C. shall refuse the bail in exceptional circumstances.***

****The exceptional circumstances may be assessed by the Court concerned and the bail application must be decided expeditiously.***

****In matrimonial cases bail is a rule and refusal is an exception.***

26. In view of the above discussion, facts and circumstances of the case and the parameters laid down above, this Court is of the considered opinion that the bail should be granted to the applicant and the instant bail application is allowed. It is hereby ordered that

in the event of arrest of the petitioner/accused, he shall be released on bail on furnishing the personal bond in the sum of Rs.15,000/- with one surety in the like amount to the satisfaction of the arresting officer. The petitioner is directed to join the investigation as and when required, he shall not tamper with the evidence and influence the prosecution witnesses. He is further directed not to leave the country without prior permission of the court concerned.

27. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the present petition. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

28. A copy of this order be sent to the Learned District & Sessions Judges of Delhi to circulate it to all the criminal courts of Delhi.

29. Bail application is disposed of accordingly.

P.S.TEJI, J

FEBRUARY 16, 2017
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