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 20/07/2022

DIRECTOR GENERAL'S STANDING ORDER NO. 3 OF 2022

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

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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 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) <u>Commissioners of Police, Superintendents of Police and SDPO:</u>

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.

Encls: As above.

(Rajnish Seth)
Director General of Police.
Maharashtra State, Mumbai.

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

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 Arnesh 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)