

Law on Arrest and Remand

In a free society like ours, the law is quite jealous of the personal liberty of every individual and does not tolerate the detention of any person without legal sanction. The right of personal, liberty is a basic human right, recognized by the general assembly of United Nations, in its universal declaration of human rights. This right has also been prominently included in the convention on civil and political rights, to which India is a party. Our constitution also recognizes this fundamental right in Article 21, which provides as under:-

"No person shall be deprived of his life or personal liberty, except according to procedure established by law"

2. Thus, the personal liberty, being the corner stone of our social structure, legal provisions, relating to arrest, have special significance and importance and for that reason they have been incorporated in the Criminal Procedure Code.

3. The relevant provisions regarding the arrest of the persons, accused of the commission of an offence. are contained in Sections 41 to 60.

4. Police can arrest a person without warrant **Section 41 Cr.P.C.**

a) who has been concerned in any cognizable offence, or against whom a reasonable complaint, has been made or credible information, has been received, or a reasonable suspicion exists, of his

having been, so concerned; or

b) who has in his possession without lawful excuse, the burden of proving which excuse, shall lie on such person, any implement of house breaking; or

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 reasonably suspected of being a deserter, from any of the Armed Forces of 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 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.

Protection to Members of Armed Forces from arrest

4. Section 197(2) (3) Cr.P.C. prohibits taking cognizance of any offence, alleged to have been committed by any member of the Armed Forces, acting or purporting to act in the discharge of official duty except with the previous consent of Central or State Government, as the case may be whereas Sections 45 Cr.P.C. provides as under:-

1). Notwithstanding anything contained in Section 41 to 44, no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties.

Rules framed by the Hon'ble Punjab and Haryana High Court, on the subject

6. It is provided in Part-C(1) Chapter-1 Vol.3, Rules and Orders of the Punjab and Haryana High Court that a Magistrate, has discretion to issue summons or warrant in the first instance, for securing attendance of the accused, in a case registered, on the basis of complaint. Sub rule 3 provides, that warrant shall not

be issued when summons, would be sufficient, for the ends of justice. It is further provided, that Magistrate should remember that issue of warrant involves interference, with the personal liberty of a person and should take care to see that no greater hardship is caused, to the accused, than it is necessary and, as such, he is to exercise his jurisdiction, to issue the process, with regard to the nature of offence, position of the accused person, and circumstances of the case.

Section 82 to 89 Cr.P.C.

7.If any court has reason to believe that any person, against whom warrant, has been issued, has absconded or concealing himself, that warrant cannot be executed, then the Court may publish a written proclamation, under Section 82 Cr.P.C, requiring him to appear at the specified time, and place not less than 30 days, from the date of publication of such proclamation. The provisions of section 82 Cr.P.C., in this regard, are mandatory and imperative. As such, a proclamation cannot be issued, before first issuing a warrant of arrest, otherwise, it would be illegal. Before issuing the proclamation , the Court has also to satisfy itself, by examining the serving Officer, or, in any other manner, that a warrant of arrest, had been issued and that the accused, is absconding, concealing his presence or evading the execution of warrant. This section has to be strictly construed.

8. Section 46 Cr.P.C. provides that in making arrest, the police officer or other persons shall actually touch

him. It also provides that, if a person, forcibly resists the endeavor to arrest him, or attempts to evade the arrest, such police Officer may use all means necessary, to effect the arrest. However, Sub Section 3, says that nothing, in this section, shall give a right to cause death of a person, who is not accused of the commission of an offence, punishable with death, or with imprisonment for life.

Right of arrested person
Section 50 Cr.P.C.

9. Every Police Officer or other person, arresting any person without warrant, shall forthwith communicate to him, with full particulars of the offence, for which he is arrested and grounds of his arrest.

Under Sub-Section (2) the Police Officer arresting a person, without warrant, other than a person accused of a non-bailable offence, shall inform the person arrested that he is entitled to be released on bail and may arrange for sureties on his behalf.

Search of arrested person
Section 51(2) Cr.P.C.

10. Whenever, it is necessary to cause a female to be searched, the search shall be made by another female, with strict regard to decency.

Communication of charges to the accused

11. Section 55 Cr.P.C. provides that when a Subordinate Officer is deputed by a Senior Officer to

arrest a person, then he shall before making the arrest, notify to the person, to be arrested, the substance of written order, given to him, by a Senior Police Officer, specifying the offence or other cause for which the arrest is to be made. Non-compliance of this provision, will render his arrest to be illegal.

Section 75 Cr.P.C.

12. Provides that the Police Officer or other person, executing a warrant of arrest, shall notify the substance thereof, to a person, to be arrested and, if so arrested, shall show him the warrant. If substance of the warrant, is not notified, by such officer, then arrest would be unlawful.

Article 22(1) of Constitution of India also provides as under

13. No person who is arrested shall be detained in custody without being informed as soon as may be of the grounds of such arrest, nor he shall be denied the right to consult and to be defended by a legal practitioner of his choice.

In order to give practical shape to this provision, a Free legal Aid Counsel is deputed, in every Court, at the Cost of the State under the provisions of the Legal Services Authorities Act, 1987, to defend the accused who are not represented by any Counsel, during remand proceedings.

Medical examination of the accused after his arrest at the request of the Police Officer.

Section 53 Cr.P.C.

14. When a person is arrested on a charge of committing an offence of such a nature, and alleged to have been committed, under such circumstances, that there are reasonable grounds, for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner acting on the request of a police officer not below the rank of Sub Inspector and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

II). Whenever the person of a female is to be examined under this section, the examination shall be made only by or under the supervision of a female registered medical practitioner.

Report of arres

Section 58 Cr.P.C.

15. This provision provides that officer Incharge of the police station, shall report to the District Magistrate, or if, he so directs to the Sub Divisional Magistrate, the cases of all the persons arrested without warrant within the limits of their respective Stations, whether such person has been admitted to bail or otherwise.

The object of this provision is to keep the District Magistrate, informed of the situation regarding the commission of grave offences. The administration of

police in a District is under the general control and directions of District Magistrate, therefore, report under this section would enable him to see whether the police is exercising the powers properly or not.

**Right to be produced before a Magistrate
without delay Section 56 Cr.P.C.**

16. Provides that a Police Officer making an arrest without warrant, without unnecessary delay and subject to the provisions regarding grant of bail take or send the person arrested before a Magistrate, having jurisdiction in the case or before the officer incharge of the Police Station.

Section 76 Cr.P.C.

17. Provides that the Police Officer or other person executing the warrant of arrest, without unnecessary delay, bring the person arrested before the Court before which he is required by law to produce such person. The proviso engrafted to this provision, provides that such delay in any case shall not exceed 24 hours exclusive of the time necessary for journey from the place of arrest, to the Court of a Magistrate.

The right to be brought before a Magistrate, within a period not more than 24 hours of arrest, has been created, with a view (i) to prevent arrest and detention for the purpose of extracting confessions, or as a means thereof compelling people to give information. (2). To prevent Police Stations, being used, as though they are prisons, the places for which they are unsuitable.3) to afford an early recourse to a Judicial Officer, independent of police of all questions of bail

or discharge. The Hon'ble Supreme Court in 1981 RCR (Criminal) 228, Khatri(II) versus State of Bihar, has strongly urged upon the State and its police authorities to see that this Constitutional and legal requirement to produce an arrested person before a judicial magistrate within 24 hours of the arrest, must be scrupulously observed.

**Right of the accused to be examined by a
medical practitioner at his request.**
Section 54 Cr.P.C.

18. When a person who is arrested, whether on a charge or otherwise alleges, at the time, when he is produced before a Magistrate, or at any time during the period of detention, in custody, that the examination of his body will afford evidence which will disprove the commission by him of any offence, or which will establish the commission by any other person of any offence against his body, the Magistrate, shall if requested by the arrested person, so to do, direct examination of the body of such person, by a Registered Medical Practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice.

Arrest of juvenile delinquents.

19. No Magistrate can remand a person below the age of 18 years, to any custody, because it is prohibited by the provisions of the Juvenile Justice Act, 2000. In case, a Juvenile delinquent, is produced before a Magistrate, then he is to record that apparently he appears a juvenile, and, as such, he is

to be produced before the Juvenile Justice Board.

20. If a public servant, having authority, to arrest, knowingly exercises that authority, in contravention of law and affects an illegal arrest, he can be prosecuted for the commission of offence, under Section 220 IPC, apart from the remedy available under Section 342 IPC, for wrongful confinement.

If the arrest is illegal it is a sort of false imprisonment and the person, making such arrest exposes himself, to a suit, for damages.

REMAND

21. Judicial Magistrate to whom the accused is forwarded may authorize his detention in such custody as he thinks fit for a term not exceeding 15 days, in the whole. The nature of custody can be altered from judicial to police and vice-versa, during the first period of 15 days mentioned in Section 167 (2) Cr.P.C. but after the expiry of 15 days, accused can be detained only in judicial custody.

It is specifically provided that no Magistrate shall authorize the detention, in any custody, unless the accused is produced before him. The object is to enable the magistrate whether the remand is necessary and also enable the accused to make any representation, he wishes to make to controvert the grounds on which the police asked for remand. In order to facilitate proof of factum of production of the accused before him, the Magistrate may obtain his signatures.

The magistrate has to apply the judicial mind,

whether or not the detention of an accused, in any custody is necessary for which he is under obligation to peruse the Police file and the case diaries. The order of detention shall not be mechanically passed in routine, by the Magistrate, on the request of the police. It is very often seen, that the remand is granted although recovery has been effected and there is no scope for further investigation, but it is denied where the accused, is to be taken to a distant place for further investigation and his assistance is necessary to ascertain the involvement of other person and collection of incriminating evidence. Therefore it is desirable that the Magistrate shall record the reasons for grant or refusal to grant remand, as envisaged by Section 167(2) Cr.P.C.

It is provided in Section 167(2) Cr.P.C. that no magistrate of Second Class, not specifically empowered by the Hon'ble High Court can authorize detention of an accused in police custody.

The total period of detention shall not exceed 90 days if the investigation relates to the commission of an offence punishable with death, imprisonment for life, imprisonment for a term not less than 10 years and not more than 60 days, where the investigation relates to any other offence. The period of 90 days and 60 days is to be computed from the date the Magistrate authorized detention of the accused. If the detention is ordered on the very day of arrest, then the said period is to be computed from that date.

LAW ON BAIL

22. The object of arrest and detention of the accused person is primarily to secure his presence, at the time of trial and to ensure, that in case he is found guilty, he is available to receive sentence. If, this object can be ensured, otherwise than his arrest and detention then it would be unjust and unfair to deprive him of his liberty during the pendency of criminal proceedings, launched against him. Grant of bail is the Rule and Jail is an exception. The accused who is a public servant, if sent to jail, loses his job and is prevented from contributing effectively, to the preparation of his defence. Equally important is the burden of his detention, which frequently falls heavily, on the innocent members of his family. However, if a person is accused of the commission of a serious offence and is likely to be convicted and punished severely for such a crime, he would be prone to abscond or jump bail, in order to avoid the trial and consequential sentence. As such, if such person is under arrest, it would be rather un-wise to grant him bail and to restore his liberty. There may be cases, in which the accused may put obstructions, in the conduct of a fair trial, by destroying evidence or may commit a serious offence, during the period of his release on bail. In such like cases, it would be improper, to release the accused, on bail but where no such risk is involved, in the release of the accused person, it would be cruel and unjust, to deny him the concession of bail. As such, law on bail, has to dovetail two conflicting demands viz requirements of the society for being shielded from the hazards of being exposed, to the misadventures, of a person,

alleged to have committed, a crime and fundamental cannons of criminal jurisprudence viz. presumption of innocence of accused person till he is found guilty.

23. In order to sub serve the above said object, the Legislature in its wisdom, has given some precise directions for the grant or refusal to grant bail. Where the legislature has granted discretion to the Courts, it is to be exercised, as per the guidelines, provided under the law.

WHERE TRIAL DOES NOT CONCLUDE WITHIN 60 DAYS

Section 437(6) Cr.P.C. provides that if, in any case, triable by a Magistrate, the trial of a person accused of any non bailable offence is not concluded within a period of 60 days from first date fixed for taking evidence, in the case, such person shall , if he is in custody, during the whole of the period be released on bail, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

This provision has been enacted by the Legislature to avoid hardship to the accused, in non-bailable cases, where the proceedings are prolonged un-necessarily beyond a certain period. However, it may be noted that the cases triable by the court of Sessions, are not within the purview of this provision.

DISCRETION FOR GRANT OF BAIL

24. Scope of grant of bail under section 437(1) Cr.P.C. depends upon various considerations, like gravity of the crime. However, the discretion vested in the Court, cannot be exercised, in an arbitrary

manner. It has to be exercised, in a judicial manner . While considering the question of bail, in case of a non-bailable offence, the Courts can, for their guidance, look to the following circumstances

- i).the enormity of the charge
- ii).the nature of the accusation;
- iii). the severity of the punishment which the conviction will entail
- iv). the nature and the character of the evidence, in support of the accusation;
- v).the danger of the accused person's absconding, if he is released on bail;
- vi). the danger of the witnesses being tampered with and influenced;
- vii). the protracted nature of the trial;
- viii). Opportunity to the applicant for preparation of his defence and access to his Counsel;
- ix).the health age and sex of the accused;
- x). the nature and the gravity of the circumstances, in which the offence is committed'
- xi). the position and status of the accused, with reference to the victim and the witnesses;
- xii). The probability of the accused committing more offences if released on bail etc.
- xiii). previous conviction and criminal record of the accused;
- xiv). Likelihood of the repetition of the same offence by the accused, if released on bail.

The order to grant bail to the accused person, merely on the concession of the Public Prosecutor, would

amount to non-application of mind. The mere fact that an accused person may be required for being identified, by the witnesses, during the investigation shall not be a sufficient ground for refusing to grant bail, if he is, otherwise, entitled to be released on bail, and gives an undertaking that he shall comply with such directions as may be given by the Court.

25. Section 437(i) provides that a person under arrest or detention believing to be accused of the commission of an offence punishable with death or life shall not be released on bail. However, the Court may direct that any person, under the age of 16 years or woman or any sick or infirm person, accused of such an offence, be released on bail, as envisaged by the proviso engrafted to this Section. The basis for this rule, is that the graver the offences, the chances of the accused making himself unavailable, or escape by absconding or by delaying collection of evidence by threatening the witnesses or scaring them away, are more. A female or a person below 16 years of age or a sick or infirm person because of physical handicaps and immaturity is not likely to interfere with the investigation, or delay the trial by abscondence.

CANCELLATION OF BAIL

26 Section 435(5) lays down that any Court which has released a person on bail under Sub Section 437 (i) may if it considers, necessary, to do so, direct such person, to arrest or commit him to custody. Bare perusal of the above said provision, reveals that the

power to cancel the bail, has been given to the Court, which granted the bail.

27 Rejection of bail when bail is applied for, is one thing, but cancellation of bail already granted, is quite another. It is easier to reject a bail application in a non-bailable case than to cancel the bail granted in such a case. The cancellation of bail unnecessarily involves the review of a decision already made and can by and large be permitted only if by reason of supervening circumstances it would be no longer conducive to a fair trial to allow the accused to retain his freedom, during the trial. In this regard reference may be made to AIR 1978 (2) SCC-411 State Delhi Administration Vs. Sanjay Gandhi. Some of the cases, in which the bail may be cancelled, are as under:-

- i) where the person on bail, during the said period commits the very same offence for which he is being tried or has been convicted and thereby proves his utter unfitness to be on bail
- ii) if he tampers with the investigation.
- iii) If he tampers with the evidence by intimidating the prosecution witnesses, interferes with the scene of the offence in order to remove traces or proof of crime etc.
- iv) if he runs away to a foreign Country, or goes underground or beyond the control of his sureties.
- v) If he commits acts of violence in revenge against the police and the prosecution witnesses and those who have booked him or are trying to book him.

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