

**SUMMARY OF PAPERS WRITTEN BY JUDICIAL
OFFICERS ON THE SUBJECT:**

“LAW RELATING TO ARREST, REMAND AND BAIL”

1] Arrest, remand and bail are components related to investigation. They generally come into play as an aid to investigation. Arrest directly curtails personal liberty of an individual. It strikes at his freedom. Therefore, many a times unwarranted arrests have reached courts of law. There have been occasions when unlawful detention has been considered as a violation of fundamental right and compensation therefor has been paid. There are several provisions which incorporate safeguards for illegal arrest.

2) **Arrest**

Section 46. - Arrest how made

This section describe the mode in which arrests are to be made. The word "arrest" when used in its ordinary and natural sense means the apprehension or restraint or the deprivation of one's personal liberty to go where he pleases. When used in the legal sense in the procedure connected with criminal offences, an arrest consists of taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge and preventing the commission of a criminal offence. The words "custody"

and "arrest" are not synonymous. It is true that in every arrest there is custody but vice versa is not true. Mere utterance of words or gesture or flickering of eyes does not amount to arrest. Actual seizure or touch of a person's body with a view to arresting is necessary. If the method of arrest is not performed as prescribed by Sec. 46, the arrest would be nugatory.

3) Guidelines regarding Remand :

- a) The period of 24 hours begins to run the moment a person is arrested by any police officer.
- b) Fifteen days of time for remand is to be counted from the first date of production of accused before court.
- c) If the accused is juvenile, his age is to be ascertained and if he finds that he is juvenile, then he be directed to be produced before Juvenile Justice Board.
- d) A person held in judicial custody can, if circumstances justify, be transferred to police custody or vice versa within a period of 15 days referred to in section 167(2) of the Cr. P.C.

4) Remand to police custody :

a) It is clear that 15 days being to run immediately after the accused is produced before the Magistrate in accordance with sub-section (1). Police custody, therefore, can't be granted of the accused after the lapse of the first 15 days.

b) When a Magistrate remands a person to police custody, he has to conform to three conditions:

(i) such custody should not be made of more than 15 days on the whole;

(ii) reasons should be recorded at the time of remanding accused in police custody.

(iii) A copy of the order and the reasons should be sent to the Chief Judicial Magistrate.

5) PERIOD OF POLICE CUSTODY

The police custody after first 15 days is not permissible. However if complicity of accused is found in some other transaction while in judicial custody, then aforesaid limitation will not apply. **C.B.I. -Vs- Anupam Kulkarni reported in AIR 1992 S.C. 1768.**

6) **Default Bail**

In case of **CBI Vs. Nirala Yadav reported in 2014 Cr.L.J. 3952** the Hon'ble Apex Court has held, "On a careful reading of the aforesaid two paragraphs, we think, the two-Judge Bench in Pragyna Singh Thakur's case has somewhat in a similar matter stated the same.

7) **Difference between Sections 167 & 309 of Cr.P.C.**

In case of **State through C.B.I. -v- Dawood Ibrahim Kaskar and others reported in 1997 Cri.L.J. 2989** - The Hon'ble Apex Court held that there cannot be any manner of doubt that the remand and the custody referred to in the first proviso to S. 309(2) are different from detention in custody under Section 167. While remand under the former relates to a stage after cognizance and can only be to judicial custody, detention under the latter relates to the stage of investigation and can initially be either in police custody or judicial custody. Since, however, even after cognizance is taken of an offence the police has a power to investigate into it further, which can be exercised only in accordance with Chapter XII, there is no reason whatsoever why the provisions of Section 167 thereof would not apply to a person who comes to be later arrested by the police in course of such investigation. If Section 309 (2)

is interpreted - to mean that after the Court takes cognizance of an offence it cannot exercise its power of detention in police custody under Section 167, the Investigating Agency would be deprived of an opportunity to interrogate a person arrested during further investigation, even if it can on production of sufficient materials, convince the Court that his detention in its (police) custody was essential for that purpose. Therefore the words "accused if in custody" appearing in Section 309(2) refer and relate to an accused who was before the Court when cognizance was taken or when enquiry or trial was being held in respect of him and not to an accused who is subsequently arrested in course of further investigation. So far as the accused in the first category is concerned he can be remanded to judicial custody only in view of Section 309 (2), but he who comes under the second category will be governed by Section 167 so long as further investigation continues. That necessarily means that in respect of the latter the Court which has taken cognizance of the offence may exercise its power to detain him in police custody, subject to the fulfillment of the requirements and the limitation of Section 167.

Following the above ruling in case of C.B.I. -v- Rathin Dandapath and others reported in AIR 2015 S.C. 3285, the Hon'ble Supreme Court reiterated that police remand can be sought in respect of accused arrested even after filing of charge-sheet.

8) As long as the majority view occupies the field it is a binding precedent. That apart, it has been followed by a three-Judge Bench in Sayed Mohd. Ahmad Kazmi's case. Keeping in view the principle stated in Sayed Mohd. Ahmad Kazmi's case which has based on three-Judge Bench decision in Uday Mohanlal Acharya's case, we are obliged to conclude and hold the principle laid down in Paragraph 54 and 58 of Pragyna Singh Thakur's case (which have been underlined by us) do not state the correct principle of law. It can clearly be stated that in view of the subsequent decision of a larger Bench that cannot be treated to be a good law. Our view finds support from the decision in Union of India and Ors. v. Arviva Industries India Limited and Ors. (2014) 3 SCC 159”.

The Hon'ble Apex Court ultimately held that the if after filing of application by the accused the prosecution files application for extension of time, the right of default bail can not be defeated.

In Nijamuddin Mohd. Bashir Khan...vs...State of Maharashtra reported in **2006 (5) Mah. L.J. 690**, it has been held that in every case in which offence is punishable with imprisonment for a term which may extent to ten years, provisions of section 167(2)(a)(ii) of Cr.P.C, will be attracted and if investigation in such case is not completed within period of 60-days, no Magistrate shall authorise detention of accused beyond the said period.

9) **BAIL BY MAGISTRATE IN SESSIONS TRIABLE CASES**

Magistrate ordinarily should ask parities to go to Session Court for bail in sessions triable cases. If magistrate prefers to give bail in such cases then he has to specifically negativate the existence of reasonable grounds for believing that such accused is guilty of an offence punishable with the sentence of death or imprisonment for life.

Pralhad Singh Bhati ..vs.. N.C.T. Delhi reported in **AIR 2001 SC 1444**.

10) **NO ARREST OF PERSON RELEASED ON BAIL**

Accused who has been granted bail cannot be taken into police custody for further investigation unless bail is cancelled [**Mithabhai Pashabhai Patel and others Vs. State of Gujarat (2009) 6 SCC 332**].

When accused is released on bail for offence under section 306 of IPC and later on offence under section 302 is added, it was wrong on part of Magistrate to say that for every addition of offence, police can not arrest him. With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime - **Pralhad Singh Bhati ..vs.. N.C.T. Delhi reported in AIR 2001 SC 1444**. If the accused is released on bail for bailable offence and if later on non bailable offence is added, then police can arrest the accused without seeking cancellation of order of bail- **Ahamed Basheer and another Vs Sub Inspector of police 2014 Cr.L.J 137 (Ker)**.

11) CONDITIONS FOR ECONOMIC OFFENCES

The condition may be imposed upon the accused compelling him to pay an amount proportionate to the economic offence. **M. Shri Nivasinu Reddy -Vs- State of Tamilnadu (2002) 10 SCC 653 and Sureshchandra Ramanlal -Vs- State of Gujrat, AIR 2008 SC (Supp) 2001.**

12) When the court grant anticipatory bail either interim or final the following factors and para meters are to be considered (1) the nature and gravity of the accusation (2) the antecedents of the applicant including the fact as to whether he has previously under gone imprisonment on conviction by a court in respect of any cognizable offence (3) the possibility of the applicant to free from justice (4) where the accusation has been made with the object of injury or humiliating applicant by having him so arrested the (5) Possibility of tampering with witnesses (6) need for custodial interogation and (7) other relevant grounds which may apply to the facts and circumstances of the particular case. **Siddharam Satlingappa Mhetre ..vs.. State of Maharashtra reported in AIR 2011 SC 312.**

13) The Sessions Court can grant transit bail for limited period but it is a matter of exercise the discretion as to whether transit bail is to be granted or not and depend upon the gravity of the offence and facts of the case. [N.Surya Rao .vs.. State of Maharashtra 2002 Cr.L.J. NOC 170 (AP)].

14) Forfeiture of bail bonds-

It is the duty of the court to ascertain whether surety is proper and whether he has property as stated by him. In case of doubt magistrate can ask police to make an inquiry and submit report and if surety is bogus and his affidavit is false, then he can be prosecuted. In Gulam Mendi .vs. State of Rajasthan reported in **1960 S.C. 1185**, it is held that before a surety becomes liable to pay amount of bond forfeited, it is necessary to give notice, and if a surety fails to show sufficient cause only then the Court can proceed to recover money. When no opportunity has been given to show-cause why he should not be made to pay, the proceeding cannot be said to be in accordance with law and should be quashed.

15) Conclusion:

Arrest, remand and bail constitute very vital parts of investigation. Accused should be arrested only in serious offences and the offences which are not punishable for imprisonment for more than seven years, Investigating Officer must satisfy with the grounds contained in Section 41 of the Code and then only he should arrest the accused. While considering application for remand, the Magistrate is suppose to get acquainted with the progress of investigation which would appear from the case diary. He must satisfy that custodial interrogation of the accused is very vital. He should find out whether or not custodial interrogation of the accused would help Investigating Officer with vital links which would lead him to direction in which investigation is to be carried out. As soon as custody of the accused is not required, he would be taken in M.C.R. This is normal practice that as soon as the accused is granted M.C.R., application for bail is moved. Application for bail moved by the accused has to be decided in light of settled principles narrated above after giving reasonable opportunity to the prosecution.

(T.K.Jagdale)
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