

ANSWERS TO QUERIES

Q. 1. Whether compensation can be awarded together with fine?

Ans: Section 357(3) Cr.P.C. reads as under:-

357. Order to pay compensation – (3) When a Court imposes a sentence, of which fine does not form a part, the court may, when passing judgment, order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

It stipulates that court can direct the accused to pay compensation to the person who has suffered any loss or injury by reason of the act of the accused only when sentence of imprisonment is awarded to the accused and fine does not form a part of said sentence. In view of said specific provision, compensation cannot be awarded together with fine.

In other words, when accused is sentenced to pay fine either with sentence of imprisonment or only fine, the court cannot direct the accused to pay compensation to the person who has suffered loss or injury.

Q. 2. Whether it is mandatory to award compensation to the victims?
If yes, in what type of cases?

Ans: Section 326 A refers to punishment for an offence of voluntarily causing grievous hurt by use of acid etc. The sentence to be imposed for this offence is imprisonment and fine. Proviso (1) to said section provides that the fine imposed shall be just and reasonable to meet medical expenses for the treatment of the victim.

(2) Proviso to the section also provides that the fine imposed under this section shall be paid to the victim.

Similarly, in case of gang rape an offence punishable under Section 376(D) the fine imposed alongwith punishment of Imprisonment shall be just and reasonable to meet medical expenses and rehabilitation of the victim.

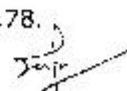
The second Proviso makes it mandatory to pay such amount of fine to the victim.

Both these sections makes imposition of fine mandatory. This fine has to be paid to the victim. In other words, the punishment by way of fine imposed under these two provisions is compensation payable to the victim of these offences. It is therefore, mandatory only under these provisions to award compensation in the nature of fine to the victims of the offences.

Q. 3. If the accused is admitted in hospital, whether Magistrate can grant police remand or judicial custody in absence of production of accused before the Court?

Ans: Section 57 read with Section 167 Cr.P.C. makes it mandatory to produce an accused within 24 hours of his arrest before the Magistrate. Proviso B to section 167 (2) requires an accused to be produced before the Magistrate for authorizing detention in police or judicial custody.

There is an exception to the above Rule. In case the accused is ill or is hospitalized and cannot be moved, the Magistrate can remand the accused in police custody without he being produced before the court. This has been held by the Hon'ble Supreme Court in the case of Raj Narin Vs. Superintendent of Jail, AIR 1971 SC 178.


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Dated: 15th January, 2015.

Answer to queries.

1. Whether the Judicial Magistrate is empowered to grant a transit bail and transit remand?

Ans: Yes. Under Section 80 of Cr.P.C. when a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within thirty kms. of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made or unless security is taken under section 71, be taken before such Magistrate or District Superintendent or Commissioner.

Under Section 81 of Cr.P.C. the Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court. Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 71 on the warrant and such person is ready and willing to give the security required by such

direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of section 437), or the Sessions Judge, of the District in which the arrest is made on consideration of the information and the documents referred to in sub-section (2) of section 78, to release such person on bail.

Nothing in this section shall be deemed to prevent a police officer from taking security under section 71.

The Cumulative effect of sections 80 and 81 is that the person arrested outside the local limits of the jurisdiction of the Court issuing the warrant has to be taken before a Magistrate or Commissioner of Police or District Superintendent of Police and the authority before whom the arrested person is produced has to satisfy himself that he is the person intended by the Court which issued the warrant. But the expression 'appears to be' indicates that no elaborate inquiry is contemplated. See: 1971 Cr.L.J.149.

2. Whether the complainant has a right to be heard in an application for bail filed by the accused?

Ans: The Hon'ble High Court of Bombay in the case of **Vinay Poddar Vs. The State of Maharashtra In Criminal Appeal No.2862 of 2008, dated 11.9.2008**, has

recognised the right of the first informant or the complainant to challenge the order granting bail. The Apex Court in the case of **J.K. International Vs. State (Govt. of Delhi) and others (2001 SCC Criminal 547)** has observed that even in a case of inquiry or trial before the Court of Sessions, the first information has a right of filing written submissions which the Court is duty bound to consider.

As held by the Apex Court, a complainant has a right to be heard when the learned Magistrate considers police report under section 173 (2) of the said Code recording an opinion that no offence has been made out. When an application for anticipatory bail is considered, the police may not place all factual details before the Court as the investigation in most of such cases is at a preliminary stage. Therefore, some role can be played by the complainant by pointing out factual aspects. In the circumstances, it is not possible to hold that the first informant or the complainant cannot be heard in an application for anticipatory bail.

When the complainant appears before the Court in the course of hearing of an application for grant of anticipatory bail, the Court is bound to hear him. But the said right cannot be allowed to be exercised in a manner which will delay the disposal of an application for anticipatory bail. The delay in disposal of such application may adversely affect the investigation. Therefore, the right which can be spelt out in favour of the first informant or the complainant is of making oral submissions for pointing out the factual

aspects of the case during the course of hearing of an application for anticipatory bail before the Court of Sessions.

The said right is to be exercised by the complainant either by himself or through his Counsel. This is not to say that the Sessions Court hearing the application for anticipatory bail is under an obligation to issue notice to the first informant or the complainant. There is no such requirement of issuing the notice to the first informant or the complainant at the hearing of the application for anticipatory bail. However, if the complainant or the first informant appears before the Court he cannot be denied a right of making oral submissions either in person or through his counsel. It must be noted here that the legal position on this aspect in the case of an application for regular bail may not be the same.

3. What is the procedure for dealing with complaints of custodial torture made by the accused when produced for remand?

Ans. Under 3 (1) of Criminal Manual, if any allegation of ill-treatment is made by a prisoner, the Magistrate shall then and there examine the prisoner's body, if the prisoner consents, to see if there are any marks of injuries as alleged, and shall place on record the result of his examination. If the prisoner refuses to permit such examination, the refusal and the reason therefor shall be recorded. If the Magistrate finds that there is reason to suspect that the allegation is well founded, he shall at once record the complaint and

cause the prisoner to be examined by a Medical Officer or Registered Medical Practitioner as provided in Section 54 of the Code of Criminal Procedure, 1973 and shall make a report to the Sessions Judge, if he has not the power to take up the necessary inquiry himself, he should forward the prisoner with the record to the Judicial Magistrate having jurisdiction to investigate the case.

If any marks or symptoms at all indicative of recent violence or ill-treatment are found, the Medical Officer or the Registered Medical Practitioner, as the case may be, concerned, should immediately make a report to the appropriate Judicial Magistrate and to the Sessions Judge. This report should specify the nature of the injuries and their position together with the opinion of the Medical officer or the Registered Medical Practitioner, as the case may be, as to their causation, and should state whether the prisoner makes any allegations in regard to them against the Police or others responsible for his arrest or custody, or state how else the prisoner explains them.

If such allegations have been made, the Sessions Judge should arrange for an Immediate Magisterial investigation into the complaint through such Judicial Magistrate as he may deem most convenient, unless he is satisfied by the Magistrate's report under sub-paragraph (1) above, that adequate investigation is proceeding.

The newly inserted section 53 A for examination of person accused of rape by Medical Practitioner makes provision for medical examination of the arrested person.

The relevant directions in this regard are as follows:

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 officer effecting the arrest and its copy provided to the arrestee.

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


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