

# Illegal Arrest and Detention of Petitioner

**Case Name:** Alex S/O Isaac v. State of Maharashtra

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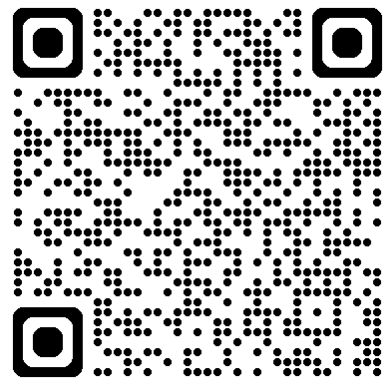
**Citation:** 2024:BHC-AS:39450-DB

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**Act:** Indian Electricity Act, Code of Criminal Procedure

Case Brief & MCQs on this case is available in the eBook:

["Bombay High Court Cases in October 2024"](#)



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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION***

***CRIMINAL WRIT PETITION NO.3898 OF 2023***

Alex S/o Isaac

AGE:42 years, Occ: - Social worker

R/o Room no-B4, Ashok Nagar

Near MMRDA Tunnel

Vashinaka, Chembur, Mumbai-74.

...Petitioner

Versus

1. The State of Maharashtra's through  
RCF Police Station, Chembur, Mumbai

2. Adani Electricity  
Tilak Nagar, Chembur, Mumbai-400071

3. The Registrar  
Ld Session Court for Greater Bombay  
Kalaghoda, Bombay.

...Respondents

Mr. Nitin S. Satpute a/w Mr. Deepak Jagdev and Ms. Shobha  
Buddhiwant, for the Petitioner.

Ms. P. P. Shinde, A.P.P for the Respondent No.1– State.

Mr. Satish Kamat for the Respondent No.2.

API – Pandit Pawar, from Kanjurmarg Police Station, Mumbai.

***CORAM : REVATI MOHITE DERE &  
PRITHVIRAJ K. CHAVAN, JJ.***

***RESERVED ON : 8<sup>th</sup> AUGUST 2024***

***PRONOUNCED ON : 1<sup>st</sup> OCTOBER 2024***

***JUDGMENT (Per Revati Mohite Dere, J.):***

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent No.1–State. Mr. Kamat, waives notice on behalf of the respondent No.2.
3. By this petition, the petitioner seeks a direction to take legal action against the concerned persons responsible for his illegal arrest and detention. The petitioner also seeks compensation of Rs.50 crores for his illegal arrest and for violation of his right under Article 21 of the Constitution of India. Direction is also sought to recover the said compensation from the respondents.

4. Mr. Satpute, learned counsel for the petitioner submitted that the petitioner was illegally arrested and detained in connection with C.R. No.22 of 2019, registered with the R.C.F. Police Station, Mumbai, for the alleged offences punishable under Sections 135 and 150 of the Indian Electricity Act, despite the petitioner having paid the electricity charges alongwith compounding charges to the respondent No.2-Adani Electricity, prior to his arrest. He submitted that because of the said arrest, the petitioner suffered mental agony and social stigma. Mr. Satpute submitted that the petitioner could not have been arrested merely because he had not supplied receipts of payment, more particularly when it was disclosed to the police that payments were made to Adani Electricity. It is further submitted that it was also incumbent on the police to have verified payment of the electricity charges from the complainant i.e. Adani Electricity, before taking any action against the petitioner.

5. Learned APP opposed the petition. Learned APP has filed an affidavit of Mr. Pandit Ramsing Pawar, Assistant Police Inspector,

presently attached to Kanjurmarg Police Station, Mumbai, dated 16<sup>th</sup> April 2024. Ms. Shinde, learned APP submitted that during the course of investigation, the concerned investigating officer had served a notice under Section 41-A of the Code of Criminal Procedure ('Cr.PC') on the petitioner on 16<sup>th</sup> February 2019, which notice was accepted by the petitioner's wife by affixing her signature thereon. Learned APP further submitted that the petitioner failed to attend the R.C.F. Police Station, and instead gave a reply dated 18<sup>th</sup> February 2019 to the notice dated 16<sup>th</sup> February 2019, that he is ready to pay the charges of Adani Electricity. She submitted that again the police issued a notice under Section 41-A of Cr.PC on 22<sup>nd</sup> January 2020, in order to verify whether the petitioner had deposited the due amount. She submitted that the petitioner informed the investigating officer that he will produce the relevant documents, however, failed to produce the same, pursuant to which, the petitioner was arrested on 29<sup>th</sup> January 2020. She submitted that at the time of the arrest, the petitioner was served notice under Section 41(1)(b)(ii) of Cr.PC informing him the reasons for arrest. According to the learned APP, the petitioner was arrested

on 29<sup>th</sup> January 2020 at 9:20 a.m. and was produced on the very same day before the learned Special Sessions Court No.58, Mumbai, pursuant to which he was granted one day police custody for further investigation. She submitted that as the petitioner did not co-operate with the investigating agency, despite two notices under Section 41-A of Cr.PC being served on the petitioner and as the petitioner did not produce documents, evidencing payment made to Adani Electricity, he was arrested. Mr. Pandit Pawar has in his affidavit stated that not only the petitioner but even the Adani Electricity authority did not submit the compounding letter to the police, despite being asked to do so.

6. Perused the papers. According to the First Informant-Anand Ashok Bhosale, Senior Manager of Adani Electricity, Mumbai, an inspection was conducted under the orders of the superior, under Section 135 of the Electricity Act on 15<sup>th</sup> December 2018 at 12:00 noon at Ashok Nagar, R. C. Marg, Vashinaka, Chembur, Mumbai. In the said inspection it was revealed that five customers were illegally using the electricity by tampering with electric meters, by taking direct

supply of electricity to their home/shop, thus constituting theft. Since five customers had committed theft of electricity for about one year i.e. from December 2017 to 15<sup>th</sup> December 2018, resulting in financial loss of Rs.3,87,144/-, an FIR came to be registered at the behest of Anand Ashok Bhosale, Senior Manager of Adani Electricity. The said FIR was registered with Deonar Police Station being Special LAC No.67 of 2018, for the alleged offences punishable under Sections 135 and 150 of the Indian Electricity Act. Since the area in question fell within the jurisdiction of R.C.F. Police Station, the said Special LAC No.67 of 2018 was transferred to R.C.F. Police Station, Chembur, Mumbai and re-registered as Special LAC No.22 of 2019 on 9<sup>th</sup> February 2019. During the course of investigation, the Senior Manager of Adani Electricity conducted the spot panchanama in the presence of two panchas and accordingly prepared a spot inspection report and the MCB Switch came to be seized from the petitioner's house. According to the first informant, the petitioner committed electricity theft from 29<sup>th</sup> December 2017 to 15<sup>th</sup> December 2018, thus causing a loss of Rs.64,988.20 to Adani Electricity.

7. It appears that during the course of investigation, two notices under Section 41-A of Cr.PC were issued to the petitioner. First notice under Section 41-A dated 16<sup>th</sup> February 2019 was received by the petitioner's wife. It appears that the petitioner did not attend the R.C.F. Police Station, pursuant to the said notice, and instead sent a reply stating that he was ready to pay the electricity charges. It appears that on 22<sup>nd</sup> January 2020, second notice under Section 41-A of Cr.PC was again served on the petitioner, in order to verify whether the petitioner had deposited the due amount, so that an appropriate decision could be taken on the pending Special LAC. (It appears that the notice inadvertently mentions 46(4) Cr.PC. instead of Section 41-A Cr.PC.) It appears that pursuant to the said investigation, the petitioner contacted the investigating officer and informed him that he will produce relevant documents relating to the said case i.e. of payment of electricity and compounding charges. According to the police, since the petitioner failed to produce the relevant documents, he was arrested on 29<sup>th</sup> January 2020 and was kept in police custody for one day, till he was released on bail on 30<sup>th</sup> January 2020.



8. At the outset, we may note that neither the petitioner nor the Adani Electricity had submitted documents to the police to show that the petitioner had paid the necessary charges at the time when the petitioner was arrested. The question that arises for consideration in this petition is, whether the petitioner was required to be arrested in the facts and whether he was illegally arrested and detained by the police.

9. We may also note that the petitioner had made payments to the Adani Electricity, as under:-

<b>Sr. No.</b>	<b>Date</b>	<b>Amount</b>	<b>Mode of Payment</b>
1.	05.01.2019	40,000/-	Cheque No. 28919 (theft amount)
2.	15.02.2019	10,000/-	Cheque No. 28936 (theft amount)
3.	30.03.2019	10,000/-	Cheque No. 28920 (theft amount)
4.	23.04.2019	7,900/-	Net banking (theft amount)
5.	27.01.2020	8,000/-	Cash (compounding charges)

10. Thus it is evident, that the petitioner had made the entire payment including compounding charges by 27<sup>th</sup> January 2020. Despite the same, the petitioner was arrested on 29<sup>th</sup> January 2020.

11. The Apex Court has time and again frowned on unnecessary arrests even in non-bailable offences. As observed by the Apex Court in the case of *Joginder Kumar v/s State of U.P. and Others*<sup>1</sup>, the quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of criminal law. The Apex Court in para 20 of the said judgment has observed as under:-

*“20. .... 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. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that 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. Denying a person of his liberty is a serious matter. ....”*

*(emphasis supplied)*

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1 (1994) 4 SCC 260

12. Infact, the Supreme Court in a catena of cases has observed, that in non-bailable offences, the police officer must be satisfied that, under Section 41(1)(b) Cr.PC, such arrest is necessary to prevent the person sought to be arrested from committing any further offence, for proper investigation of the offence, to prevent the arrestee from tampering with or destroying evidence, to prevent them from influencing or intimidating potential witnesses, or when it is not possible to ensure their presence in court without arresting them. Police officers have a duty to apply their mind to the case before them and ensure that the conditions in Section 41 are met before they conduct an arrest. Thus, the emphasis is on bail, even in non-bailable offences, except in heinous cases [*Arnesh Kumar v/s State of Bihar and Another*]<sup>2</sup>.

13. Section 41 of the Cr.PC. deals with the power of the Police to arrest without warrant. The Apex Court in *Arnesh Kumar (Supra)*,

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<sup>2</sup> (2014) 8 SCC 273

has observed as under:-

*“7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured....*

*7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.*

*7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions*

*are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC.*

8. ....

8.1. ....

8.2. *Before a Magistrate authorises detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused.*

*8.3. The Magistrate before authorising detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording his satisfaction in writing that the Magistrate will authorise the detention of the accused.*

*8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.*

*9. Another provision i.e. Section 41-A CrPC aimed to avoid unnecessary arrest or threat of arrest looming large on the accused requires to be vitalised. Section 41-A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act,*

*2008 (5 of 2009), which is relevant in the context reads as follows:*

***"41-A. Notice of appearance before police officer.- ....."***

*The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.*

*10. We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued.*

*11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:*

*11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;*

*11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);*

*11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;*

*11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;*

*11.5. ....*



11.6. ....

*11.7. 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 the High Court having territorial jurisdiction.*

*11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.”*

*(emphasis supplied)*

14. Similarly, in *Satender Kumar Antil v/s Central Bureau of Investigation and Another*<sup>3</sup>, the Apex Court has observed that Sections 41 and 41-A are facets of Article 21 of the Constitution of India, and the Investigating Agencies and their officers are duty bound to comply with the mandate of the said provisions as well as the directions issued in *Arnesh Kumar (Supra)*. The relevant paras of *Satender Kumar Antil (Supra)* read thus:

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3 (2022) 10 SCC 51

*“24. This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer 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 offence alleged is more than seven years, among other reasons.*

*25. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offence. 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.*

*26. Section 41-A deals with the procedure for appearance before the police officer who is required to issue a notice to the person 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, and arrest is not required under Section 41(1). Section 41-B deals with the procedure of arrest along with mandatory duty on the part of the officer.*

*27. ....*

*28. We only reiterate that the directions aforesaid ought to be complied with in letter and spirit by the investigating and prosecuting agencies, while the view expressed by us on the non-compliance of Section 41 and the consequences that flow from it has to be kept in mind by the court,*

*which is expected to be reflected in the orders.*

*29. Despite the dictum of this Court in Arnesh Kumar (Supra), no concrete step has been taken to comply with the mandate of Section 41-A of the Code. This Court has clearly interpreted Sections 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.*

*30. ....*

*31. ....*

*32. We also expect the courts to come down heavily on the officers effecting arrest without due compliance of Section 41 and Section 41-A. 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. Our view is also reflected by the interpretation of the specific provision under Section 60-A of the Code which warrants the officer concerned to make the arrest strictly in accordance with the Code.*

*.....*

*100. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments:*

*100.1. ....*

*100.2. The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41-A of the Code and the directions issued by this Court in Arnesh Kumar (Supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.*

*100.3. The courts will have to satisfy themselves on the compliance of Sections 41 and 41-A of the Code. Any non-compliance would entitle the accused for grant of bail.”*

*(emphasis supplied)*

15. In ***Mohammed Zubair v/s State of NCT of Delhi and***

***Others***<sup>4</sup>, the Apex Court in paras 28, 29, 30 has held as under :

*“28. Police officers are vested with the power to arrest individuals at various stages of the criminal justice process, including during the course of investigation. However, this power is not unbridled. In terms of Section 41(1)(b)(ii) of the CrPC, the police officer in question must be satisfied that such arrest is necessary to*

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4 2022 SCC OnLine SC 897

*prevent the person sought to be arrested from committing any further offence, for proper investigation of the offence, to prevent the arrestee from tampering with or destroying evidence, to prevent them from influencing or intimidating potential witnesses, or when it is not possible to ensure their presence in court without arresting them.*

29. *Police officers have a duty to apply their mind to the case before them and ensure that the condition(s) in Section 41 are met before they conduct an arrest. This Court has time and again, reiterated the importance of doing so, including in Arnesh Kumar v. State of Bihar, where the Court observed:*

*“6. [...] The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person...”*

30. *We once again have occasion to reiterate that the guidelines laid down in Arnesh Kumar (supra) must be followed, without exception. The raison d'être of the powers of arrest in relation to cognizable offences is laid down in Section 41. Arrest is not meant to be and must not be used as a punitive tool because it results in one of the gravest possible consequences emanating from criminal law : the loss of personal liberty. Individuals must not be punished solely on the basis of allegations, and without a fair trial. When the power to arrest is exercised without application of mind and without due*

*regard to the law, it amounts to an abuse of power. The criminal law and its processes ought not to be instrumentalized as a tool of harassment. Section 41 of the CrPC as well as the safeguards in criminal law exist in recognition of the reality that any criminal proceeding almost inevitably involves the might of the state, with unlimited resources at its disposal, against a lone individual.”*

*(emphasis supplied)*

16. We in the facts, find that the arrest of the petitioner was arbitrary and unwarranted. We find, that the arrest of the petitioner was not only uncalled for by the police but was a rash act, contrary to the provisions of law. We also find, the reasons for arresting the petitioner, as recorded in the ground of arrest to be flimsy and contrary to law. It was incumbent for the Court to examine whether the reason for formation of the belief had a rational connection with the formation of belief that there was a direct live link between the material before the Officer and the formation of the belief. We are afraid that the same has also not been done.

17. The learned Judge authorising detention has also not recorded his own satisfaction, in brief. The said satisfaction as

mandated in law is not reflected from the order and does not conform to the directions given by the Apex Court. We are afraid, that not only was the petitioner's arrest without any justification but even the petitioner's detention was without application of mind. The subjective satisfaction arrived at by the investigating agency is not wholly immune from judicial review. It is the duty of the Court to consider whether the reasons for deprivation of liberty are rational, reasonable or fanciful. It is the duty of the Courts to ensure that the subjective satisfaction is on factual basis, meriting arrest and not on the whims or caprice of the investigating agency.

18. Admittedly, the offence alleged i.e. Section 135 of the Electricity Act against the petitioner invoked was non-bailable, but was certainly not punishable with imprisonment for more than seven years. It is also a compoundable offence. The reasons set out for petitioner's arrest were flimsy more particularly, when the petitioner had pleaded that he had paid all the charges. The police could have well verified from the complainant, regarding the payment made by the petitioner,

instead of arresting the petitioner arbitrarily.

19. In the facts, we do not think it was necessary for the police to arrest the petitioner, since payment was made. The police ought to have given some time to the petitioner to produce the receipts in question. The reasons enlisted for arresting the petitioner in the notice given under Section 41(1)(b)(ii) are- (i) for proper investigation; (ii) to prevent the accused from causing disappearance or tampering with the evidence; (iii) to prevent the accused from making any inducement, threat or promise to any person and (iv) as unless the accused was arrested, his presence in the Court cannot be ensured. A perusal of the remand report dated 29<sup>th</sup> January 2020 in Special LAC No.22 of 2019, would reveal that the petitioner's police custody of 2 days was sought on the ground to find out, for how many days the petitioner had committed theft of the electricity; whether there was involvement of any other person; and, to check his antecedents. The learned Magistrate however granted one day's police custody. Again on 30<sup>th</sup> January 2020, when the petitioner was produced, an application for



bail was filed on behalf of the petitioner stating therein that the petitioner had already paid all the dues including compounding charges and that the matter was settled between the parties. Pursuant thereto, the said application was allowed and the petitioner was enlarged on bail on certain terms and conditions. It is not in dispute that in February 2023 in the scheduled Lok Adalat, the case came to be disposed of, in view of the settlement between the petitioner and Adani Electricity.

20. As held in the case of *Arnesh Kumar (Supra)*, arrest brings humiliation, curtails freedom and casts scars forever. The Apex Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the Police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would

be prudent and wise for a Police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation.

21. Thus, it is clearly evident that the police failed to comply with the provisions of the Cr. PC as well as the directions of the Apex Court in *Arnesh Kumar (Supra)*, rendering the petitioner's arrest illegal. We find in the peculiar facts, that not only the police but even the learned Magistrate before whom the matter appeared had without any application of mind granted one day's police custody of the petitioner. It is the duty of every Magistrate, when an accused is produced before him/her, to ensure that the provisions of law have been duly complied with and whether police custody in those given facts, is warranted. We are afraid, that even the learned Magistrate failed in his duty to consider whether the arrest of the petitioner was justified having regard to the nature of allegations and Sections with which the petitioner was charged. The Magistrate failed to comply with the directions issued by the Apex Court in *Arnesh Kumar (Supra)*. As per the direction, even the Magistrate concerned, shall be liable for

departmental action by the appropriate High Court, for authorising detention without recording reasons. All that the Magistrate in his order dated 29<sup>th</sup> January 2020 granting one day's Police Custody Remand has observed, *'Perused remand application, FIR and case diary. The names of accused are reflected in FIR. The investigation is in progress. I am satisfied for the reasons mentioned in remand appln that presence of accused are required for further progress in investigation. Hence, all the accused are remanded to police custody till 30.01.2020.'* Magistrates are not mute spectators, but are Courts of first instance, before whom the accused are produced. It is there bounden duty to uphold the law and protect the liberty of an individual from arbitrary arrest. In the present case, the petitioner had paid all his dues including the compounding charges and as such the petitioner's arrest was unwarranted and as such arbitrary. The aforesaid action of the police, resulted in mental agony to the petitioner since he was required to stay in police custody for one day despite having paid all dues of Adani Electricity including compounding charges.

22. In view of the aforesaid, we pass the following order:-

**ORDER**

(i) We direct the State Government to pay compensation of Rs.25,000/- (Rupees Twenty-Five Thousand) to the petitioner, within 6 weeks from today;

(ii) We direct the Commissioner of Police, Mumbai, to appoint an Officer not below the rank of Deputy Commissioner of Police, to conduct a departmental inquiry with respect to the arrest of the petitioner by the police officers of the R.C.F. Police Station, Chembur, Mumbai. The petitioner to be heard in the inquiry so conducted. The inquiry to be completed within 8 weeks from the date of receipt of this order;

(iii) The compensation so paid, to be recovered, after a full-fledged inquiry, from the salary of the person/persons found responsible for the illegal detention of the petitioner;

(iv) A copy of this order be sent to the learned Magistrate who granted police custody of the petitioner.

23. The Petition is allowed and is accordingly disposed of.  
Rule is made absolute in the aforesaid terms.

24. Petition to be listed on **19<sup>th</sup> December 2024**, for recording compliance of clauses (i) to (iii) of para 22 of the aforesaid Judgment and Order.

25. A copy of this Judgment and Order be placed before the Administrative Committee of this Court headed by the Hon'ble the Chief Justice for taking appropriate steps against the Magistrate, having regard to para 11.8. of the judgment of the Apex Court in *Arnesh Kumar (Supra)*.

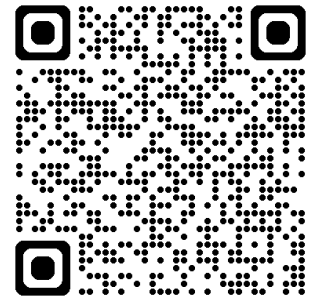
All concerned to act on the authenticated copy of this judgment.

***PRITHVIRAJ K. CHAVAN, J.***

***REVATI MOHITE DERE, J.***

Case Brief & MCQs on "Alex S/O Isaac v. State of Maharashtra" (2024:BHC-AS:39450-DB) is available in the eBook:

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