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# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CRIMINAL APPELLATE JURISDICTION
## WRIT PETITION NO.4458 OF 2017

Bipin Satish Chandra Agrwal ]
Age: 49 years, Indian Inhabitant ]
residing at 1401, Veena Apartments, ]
Walkeshwar, Mumbai 400 006 ] … Petitioner

**V/s.**

1. State of Maharashtra ]

2. Mahesh Lamkhade, ]
Sub-Inspector of Police, ]
Azad Maidan Police Station, ]
C.S.T., Mumbai ] … Respondents

**WITH**

## CRIMINAL APPLICATION NO.32 OF 2018

Bhavesh Sheth ] … Applicant
In the matter between:
Bipin Satish Chandra Agrwal ] … Petitioner

**V/s.**

State of Maharashtra & Anr. ] … Respondents

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Mr. Bipin Agrwal, Petitioner in person.

Mr. J. P. Yagnik, APP for the Respondent No. 1-State.

Mr. Anvay Pawar a/w. Adv. Yuvraj Tidke for Respondent No.2.

Ms. Aarti Gaware, API and Ms. Kajal Pansare, PSI, Azad Maidan Police Station, present.

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CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.
RESERVED ON : 20th August, 2026.
PRONOUNCED ON : 22nd October, 2026.

Judgment (Per : Kamal Khata, J) :-

1) By this Writ Petition under Article 226 of the Constitution of India, the Petitioner seeks a relief that, his arrest on 4th August 2017, be

declared illegal, unlawful and effected without due process of law. He further seeks a departmental inquiry against the Sub Inspector of Police (Respondent No. 2) and all concerned Officers. He additionally seeks compensation from the State for illegal detention and deprivation of his lawful rights.

2) The Criminal Application is filed for intervention by the Developer M/s. Seth and Sonal Developers.

**Petitioner's case:**

3) The Petitioner is an Indian citizen, residing at Walkeshwar, Mumbai engaged in the business of import and export, *inter alia,* of garments. The Petitioner's mother-in law namely Smt. Asawari K. Kulkarni, a senior citizen aged about 70 years, resided in a building known as 'The New Aarti Co-operative Housing Society' situated at Old Nagardas Road, Andheri East, Mumbai-69(the Society). The Society was undergoing redevelopment, undertaken by a partnership firm, namely, M/s. Seth and Sonal Developers, represented by partners Bhavesh Seth and Kamlesh Vora. Owing to certain mismanagement in the Society, the building was demolished without execution of individual Agreements with the Developers. Following the demise of her husband, to secure her interest in the Flat, being her sole valuable asset, she appointed the Petitioner, being the only male member in the family, as her Constituted Attorney to

negotiate on her behalf with the builder.

4) The Petitioner was accordingly negotiating with the builder either to sell the flat in the Society or to secure a larger area of flat post redevelopment in addition to the transit rent. In this regard, pursuant to a telephonic conversation on 2nd August 2017, the Petitioner agreed to meet the Developers at their office at 3/B, 35, Court Chambers, New Marine Lines, Mumbai- 20, on 4th August 2017 at around 11 a.m. On reaching the office, he was informed that, the Developers were unable to meet him then and the meeting was rescheduled to 6:00 pm. The Petitioner accordingly reached the builder's office at around 6:00 pm. He negotiated for the sale of Flat for approximately Rs.1 Crore 64 lakhs and to show their bonafide and close the deal at that rate, the Developers handed him an advance sum of Rs.2,00,000/-. However, no sooner he received the cash, the Police arrived, handcuffed him and took him to the Azad Maidan Police Station.

5) The Developers lodged a complaint against the Petitioner registered as, F.I.R. No.243 of 2017, for extortion under Section 384 of the Indian Penal Code, 1860 ('IPC'). At around 8.20 pm., a Notice under Section 41A of the Code of Criminal Procedure, 1973 (CrPC) was served upon him. He was produced before the learned Magistrate, 64th Court on Saturday i.e. 5th August 2017 at around 1.45 pm. and was remanded in Police custody till Tuesday i.e. 8th August 2017. No reasons were given in the Order of remand. Moreover, without citing any reasons, the police

remand was continued till 10th August 2017. Thereafter, on 10th August 2017, upon being produced before the Magistrate, he was remanded to judicial custody, again without any cogent reasons for the same.

6) Petitioner's Application for bail filed on 10th August 2017, was listed for hearing on 14th August 2017 and owing to the unavailability of the learned Magistrate the case stood adjourned to 16th August 2017. Once again, without giving any cogent reasons, the Petitioner's remand to judicial custody was continued until 24th August 2017. The Petitioner thereafter applied for bail before the Sessions Court, which was granted by an Order dated 28th August 2017 and he was released on bail of Rs.25,000/-.

7) Mr. Bipin Agrwal appeared in person. He narrated the entire sequence of events stated hereinabove with dignity, maintaining calm and composure throughout and conducted the hearing with professionalism.

7.1) He submitted that, the first complaint against him was apparently filed sometime on 23rd June 2017, with the Azad Maidan Police Station but no notice or summons were issued pursuant thereto.

7.2) He submitted that, his arrest was entirely illegal and that he had been falsely implicated in a case arising purely out of collusion between the Respondent No.2 and the Developers. He contended that Respondent No. 2 had manipulated records to implicate him.

7.3) He drew our attention to Section 384 of the IPC and submitted that, it carries a maximum sentence of three years upon conviction. He

submitted that, there was no reason to arrest him. The Notice under Section 41A was served upon him only after his arrest, at around 8.20 pm. No investigation was conducted by the Respondents following its service. There was no opportunity granted to him for any compliance therewith and therefore there was total non-compliance therewith and despite that, he was arrested.

7.4) Mr. Agrwal took us through the record and submitted that, the Police documents namely the Arrest Form, FIR No.243 of 2017 dated 4th August 2017, two Station diary entry Nos. 50 and 55, both dated 4th August 2017, reflect several serious lacunae and inconsistencies clearly indicating his arrest was malafide and illegal.

7.5) He submitted that, the Police custody for six days followed by judicial custody for a further eighteen days, was entirely unwarranted and his illegal arrest caused defamation and a permanent blot on his goodwill and standing as a businessman. He contended that, the Developers on the strength of concocted stories, without any material to substantiate the same, procured his arrest and abused the process of law. All these actions were triggered by the Developers to prevent him from exposing their wrongdoings in collusion with certain members of the Society. Relying upon the judgment of the Hon'ble Supreme Court in the case of *Arnesh Kumar vs. State of Bihar* reported in (*2014) 8 SCC 273*, he contended that, the arrest was in breach and violation of the settled principles of law therein.

**Respondents' case:**

8) Mr. Yagnik learned APP appearing for the State, opposed the Petition. He relied upon the decision of this Court (Nagpur Bench) to submit that "grounds of arrest" and "reasons of arrest" bear two different connotations and that the CrPC does not prescribe a specific mode or time frame for communication of grounds of arrest. He submitted that the "grounds of arrest" are required to be furnished to the detenu two hours prior to the remand, and this was not done in the present case.

9) Mr. Anway Pawar for the Respondent No. 2 also strenuously opposed the Petition. He relied upon the Bombay Police Manual, 1956 Volume III and in particular Rule No. 35, to submit that he had scrupulously and meticulously complied with his statutory duty as per the rules. He submitted that, the Ld. Magistrate had passed the Order of remand, thereby ratifying the legality of the arrest. He relied on the following decisions in support of his contentions.

a) *Satender Kumar Antil v Central Bureau of Investigation and Anr.* reported in *2026 SCC OnLine SC 162.*

b) *Arnesh Kumar v State of Bihar* reported in *(2014) 8 SCC 273.*

c) *Superintendent of Police, CBI & Ors. v Tapan Kumar Singh* reported in *(2003) 6 SCC 175.*

9.1) In light of the above, Mr. Pawar submitted that, the Respondent No. 2 had discharged his duty by signing the FIR, arrest form, 41(1)(a) and 41(b) notice and Remand Report dated 5th August 2017. He relied upon the panchnama to submit that, the Respondent No.2 was not present during the arrest and had not handcuffed him. He accordingly submitted that, the Petition is false frivolous, vexatious and lacks material substance and deserves to be dismissed.

10) We have heard Mr. Agrwal, appearing in person, Mr. Yagnik, learned APP for the State, Mr. Anvay Pawar for Respondent No.2 and have carefully perused the entire record.

11) After hearing the Petitioner at length, we felt a sense of deep anguish imagining what he went through. Clearly this is a case of sheer abuse of process by the Developer in collusion with the Police. It is evident from the documents placed on record. It is a classic case where a Police Sub Inspector has exploited his official position and weaponized Police machinery at his command, to advance the Developer's interest against the Petitioner, to wreak havoc in the Petitioner's life apparently because he did not succumb to their pressure to accept the deal offered and threatened them to expose their wrongdoings along with certain Society members. The reasons are obvious and not too far to seek.

**Manipulation of Documents**:

12) **Station Diary Entry No. 50 dated 4th August 2019 at 17.10 hours:**

a) This entry reveals that Complainants statement was recorded and to ascertain the truthfulness no preliminary investigation or verification of the genuineness of the complaint was carried out by the Respondent No.2.

b) Although the Police claim to have prior intimation through written complaint dated 23rd June 2017, there is no mention of the Complainant's name in the said Diary. This is anomalous and further undermines the narrative.

13) **Station Diary Entry No. 55 dated 4th August 2019 at 20:20 hours:**

a) The Police records that it completed the following tasks within 2 hours and 10 minutes:

Registration of the FIR. The timing demonstrates that the FIR was filed after the arrest of the Petitioner not before it, though the police had knowledge of Complaint dated 23rd June, 2017. This is contrary to the settled principles of criminal jurisprudence.

14) **FIR No. 243 of 2017 dated 4th August 2017**:

a) The Complainant's statement, in para 5 of the FIR, concocts a dispute between the Petitioner and his mother-in-law and attributes to the Petitioner an intention to usurp the property. However, the same is belied with the documents on record such as, the Power of Attorney, Individual Agreement (unregistered) dated 8th May 2017 which marks Petitioner as the witness and includes the share certificate no. 50 in the name of Smt. Asawari K Kulkarni and para 29 thereof which records that all notices/intimations by complainant to be sent at the Petitioner's address at Walkeshwar Mumbai owing to the mother-in-law residing with her daughter and Petitioner. Additionally, the emails from 6th April 2017 to 29th April 2017 also record the communication for Indemnity Bond for indemnifying the Society. These documents establish a relationship of lawful attorney, not dispossession.

b) Though, the Complainant's statement claims lodging of a written complaint on 23rd June 2017, the RTI response from the Police contradicts it, stating no complaint was received. FIR fails to mention the name of the

complainant. These serious lacunae are unexplained.

c) Though the Police claims that, complaint copy was filed with the chargesheet before the Ld. Magistrate 64th Court, the chargesheet itself states that Police had not annexed the copy of the written complaint by the informant.

d) These mutually contradictory versions, taken together with the foregoing evidence, compel the conclusion that, the statements of the Police were made with a deliberate intent to implicate the Petitioner in a false case of extortion and justify his unlawful arrest.

15) **Arrest Form**: An examination of the Arrest Form annexed at page Nos.520 and 523 to the charge-sheet reveals the following irregularities:

a) the form duly filled with the date as 5th August 2017 at four places has been overwritten as 4th August 2017 at three places. Undoubtedly, this constitutes tampering with a statutorily maintained document.

b) Serial No. 1 records that the Police arrest registration No.262 is dated 5th August 2017, whereas the Petitioner was arrested on 4th August 2017. This discrepancy

exposes the falsity of the arrest record.

c) Serial No. 7 which should contain information regarding the medical examination, is left blank, as against the Station Diary 55, which records that, the medical examination was conducted. The contradiction is apparent as it is filled with falsehood.

d) Serial No. 8 which statutorily requires information concerning the grounds of arrest and the legal rights of the person arrested is left blank though statutorily mandated to be filled. Furthermore, the date and time of arrest intimation given to his wife Mrs. Shalaka, is also blank.

e) These omissions are telling; they suggest that arrest intimation was effected much subsequent to the arrest as the Petitioner contends. We find credible the Petitioner's assertion that, signatures of the Petitioner and his wife were obtained between 1:20 a.m. and 2:00 a.m. on 5th August 2017. We also find merit in the contention that to align the information in FIR and the Station Diaries the Police resorted to overwriting the date to manipulate the record but however, were unable to alter the Registration No. 262 in the Arrest Register which

recorded the date as 5th August 2017.

f) Serial No. 12, characterizes the Petitioner as a recidivist who is likely to abscond on bail. This categorization is wholly unsupported by even iota of any corroborative material. The Police have placed no evidence or any material on record that, the Petitioner possessed any criminal antecedents. The arrest of the Petitioner was done without verifying the genuineness of the complaint. The classification appears to have been made on an deliberate assumption without any evidence or information collected by the Respondents. This contravenes the provisions of Section 41A of the CrPC.

16) With regard to the service of Notice under section 41-A of CrPC to the Petitioner, we find no statements or evidence on record to show that the Petitioner was granted a genuine opportunity to comply with the Notice as per the provisions of 41-A (2) and (3). No reasons are recorded by the Police under 41-A to show that petitioner had failed to comply with the terms of the notice. Evidently, the arrest was prior to the Notice and therefore undoubtedly illegal under the well-settled law.

17) We do not find any material indicating medical examination of the Petitioner carried out on 4th August 2017.

18) We also find merit in the submission of the Petitioner regarding

the voice sample. The voice sample was dispatched from the Azad Maidan Police Station to the Forensic Department at Kalina, analyzed, returned, and received by the Police Station all on the same day, namely 18th October 2017 and the Forensic Report too was prepared on the same day. This same day turnaround is remarkable and inconsistent with usual and normal forensic procedure. We regularly come across with cases that, the spectrography test reports from FSL are given leisurely and with unaccounted delay. Furthermore, the Respondents violated the successive Orders of the Hon'ble Sessions Court dated 6th February 2018, 3rd April 2018, 1st February 2020 and 10th September 2020 directing compliance (to record the voice sample) with the guidelines established by the Supreme Court in *Sudhir Choudhary vs. State (NCT) of Delhi* (Cr. Appeal No.700-701 of 2016 arising out of SPL No.3009-3010 of 2015).

19) We also find merit in the contention of the Petitioner that, the Respondents have deliberately not annexed the Forensic Report dated 18th October 2017 along with the charge-sheet and have falsely submitted that, they have the necessary transcript/documents collected by the I.O. for investigating purposes and were unable to provide the same before the Hon'ble Sessions Court. The willful suppression coupled with blatant denial regarding the arrest of the Petitioner by the Respondent in breach of the Judgment of the Hon'ble Supreme Court in *Arnesh Kumar (supra)* clearly indicates *mala fide* intent to conceal the wrongful acts.

20) The response of the Respondent No. 2 clearly lacks substance. Apart from bald statements there is nothing produced on record to show that the Police Officer had collected any information either before or after the arrest. There is nothing on record to show that the Petitioner was an unknown person to the Informant or otherwise. He was the Power of Attorney holder for his mother-in-law, who was a flat owner in the Society which the complainant was developing. If that was so, the Petitioner was not an unknown person. Assuming the Petitioner was arrested under a mistaken impression and the Police had 'reasons to believe' that he was an extortionist, a preliminary inquiry with the Petitioner would have revealed the correct facts. The Police deliberately did not take any pains to find out why was the cash given. It could have been against advance rent payable, sale consideration or deposit toward other contractual obligation. No effort was made by the Respondent No.2 to ascertain the truth behind receipt of cash. The Police have failed to show in what manner the requirements of Section 41-A of CrPC have been complied with, particularly when the offence falls under Section 384 of the IPC, with a maximum punishment upto 3 years.

21) The judgment in *Satender Kumar Antil* (supra) does not in any manner assist the Respondent No.2, but in fact, supports the contention of the Petitioner. Paragraph 32 thereof holds that, a police officer cannot simply arrest a person to ask questions. The officer must satisfy himself why

the investigation qua the offence cannot proceed against the concerned individual without custody. There is no material on record to show that the Police had any satisfactory answers. We therefore conclude that the arrest and remand were high handed, arbitrary and made without application of mind and without following the basic statutory provisions of law.

22) Similarly, *Arnesh Kumar* (supra) too does not assist the Respondent No. 2 and in fact supports the Petitioner. The Police have failed to provide satisfactory answers to critical questions: Why is arrest necessary?, Is it really required?, What purpose will it serve? and What object will it achieve? We do not find any legally justifiable answers to the aforesaid questions, leading us to safely conclude that, the arrest was malafide and made with an ulterior motive to harass, pressurize and tarnish the reputation of the Petitioner in the Society.

23) The reliance placed on the case of *Superintendent of Police, CBI* (supra) also does not assist the Respondents. The Police officers were obliged to collect information, which they deliberately failed to collect. The reply filed by the Respondent No. 2 does not mention any steps taken to find out, who was the Petitioner and why was cash paid to him by the Developers? And whether he was a continuing threat to the complainant although he had no criminal antecedents.

24) Upon examining the entire case and the record, we find that the Police have attempted to characterize the Petitioner as some gangster,

history-sheeter or an extortionist without having an iota of evidence in that regard and even without an investigation into genuineness of complaint. Even a simple analysis and investigation of the messages and communication on record reveal that the Petitioner was alleging wrongdoings by the partners of the Developers. The Police have entirely failed to do so. It clearly appears to us that the Respondent No.2 in connivance with the Developer/ Intervener, with a view to prevent the Petitioner from pursuing his lawful remedy has falsely implicated him in the present crime by clearly con-writing a story of alleged extortion.

25) We find that, the learned Magistrate of the 64th Court was also responsible for the Petitioner's wrongful detention. No reasons have been recorded for justifying continuation of remand of the Petitioner. We find that the Ld. Magistrate has failed to independently apply his mind and adopted a very casual approach, thereby causing grave prejudice to the Petitioner on account of continued entirely unlawful arrest and detention.

26) We acknowledge that the unlawful arrest has caused substantial financial loss to the Petitioner, in addition to irreparable damage to his reputation and lasting blemish on his credibility.

27) In view of the above, we pass the following Order:

a) We hereby declare that the arrest of the Petitioner on 4th August 2017 was unlawful and illegal.

b) The State shall pay compensation to the Petitioner in the sum of Rs.5,00,000/- on account of the unlawful arrest and detention for six days in police custody and for twenty days in judicial custody within a period of two weeks from the date of uploading of the Order on the official website of the High Court of Bombay.

c) The State is directed to initiate appropriate strict action including an order of immediate suspension against the Respondent No. 2 and all concerned officers and recover the proportionate compensation from his/their salaries if so advised.

d) We direct the Registry to place this Judgment before the Administrative Committee of the Bombay High Court for taking appropriate action against the learned Magistrate(s) of the 64th Court, Mumbai who adjudicated the remand application of the Petitioner on 5th August 2017, 8th August 2017, 10th August 2017 and Bail Application on 16th August 2017 and 22nd August 2017 for having wrongfully and without verifying and carefully examining the matter and without recording any reasons permitted police and judicial custody of the Petitioner.

28) Petition is accordingly allowed in the aforesaid terms.

29) In view of the disposal of Petition, the Criminal Application No. 32 of 2018 filed therein does not survive and is accordingly disposed off.

(KAMAL KHATA, J.) (A.S. GADKARI, J.)