

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

*WRIT PETITION NO.2436 OF 2023*

Neelam Nitin Sampat,  
Adult Indian Inhabitant, residing at  
Room No. 21, 458/68, 1<sup>st</sup> Floor,  
JJKB Society, JSS Road, Chirabazar,  
Kalbadevi, Mumbai – 400 002

...Petitioner

Versus

1. State of Maharashtra
2. Senior Police Inspector  
Tardeo Police Station
3. Priyanka Kadam,  
PSI, Tardeo Police Station
4. The Commissioner of Police  
Crawford Market, Mumbai
5. Deputy Commissioner of Police  
Zone 3, Byculla

...Respondents

Mr. Kripashankar Pandey for the Petitioner

Ms. P. P. Shinde, A.P.P for the Respondents–State

**CORAM : REVATI MOHITE DERE &  
GAURI GODSE, JJ.**  
**RESERVED ON : 12<sup>th</sup> SEPTEMBER 2023**  
**PRONOUNCED ON : 29<sup>th</sup> SEPTEMBER 2023**

*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 service on behalf of the respondents–State.

3 By this petition, filed under Article 226 of the Constitution of India, the petitioner seeks a writ of *habeas corpus*, to produce her husband-Nitin Sampat before this Court and for his release forthwith from illegal detention of the respondents. Direction is also sought to take appropriate action against respondent Nos. 2 and 3 for their willful breach of the mandatory guidelines issued by the Apex Court in the cases of *Arnesh Kumar Vs. State of Bihar and Anr*<sup>1</sup> and *Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.*<sup>2</sup>

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1 (2014) 8 SCC 273

2 2022 live law (SC)577

4           The petitioner is the wife of Nitin Sampat. According to the petitioner, her husband-Nitin was illegally arrested and detained by the respondent Nos. 2 and 3, despite the offences with which, he was charged i.e Sections 354A and 509 of the Indian Penal Code (`IPC'), being bailable offences, and despite the fact, that the petitioner's husband-Nitin was ready to furnish bail. According to the petitioner, her husband-Nitin had co-operated with the officers during his visits to the Tardeo Police Station and as such, had complied with the 41A notice issued to him. It is the petitioner's case that on 17<sup>th</sup> July 2023, her husband-Nitin and his advocate visited the Tardeo Police Station at 3:00 p.m; that as Nitin apprehended that he would be illegally arrested in bailable offences and for extraneous reasons, Nitin gave a written communication to the Senior Police Inspector, through his advocate, conveying his intention of furnishing and procuring bail; however, despite the same, Nitin was illegally arrested on 17<sup>th</sup> July 2023 at 9:30 p.m, and the petitioner was

formally intimidated about the same. According to the learned counsel for the petitioner, despite the petitioner's husband being ready to furnish bail, he was detained by the respondent Nos. 2 and 3 illegally and the advocate who was with her husband, was asked to produce his identity card and was threatened with lodging of an NC and an FIR against him under the IPC, when the advocate pointed out, that the petitioner's husband-Nitin was illegally detained by the police in bailable offences.

5           Learned counsel for the petitioner submits that the petitioner's husband-Nitin is a music teacher having reputation amongst his peers and students and an unblemished record of more than 20 years and as such, his illegal detention and torture whilst in custody, has caused him immense trauma.

6           We have perused the papers. The petitioner, in this petition seeks not only a writ of *habeas corpus*, to produce her husband-Nitin Sampat before this Court, but also a direction to

the respondent Nos. 4 and 5 to take appropriate action against respondent Nos. 2 and 3 for their willful breach of the mandatory guidelines of the Apex Court.

7           The petitioner's husband-Nitin was arraigned as an accused in connection with an FIR, which was initially registered by the complainant with the Malad Police Station, Mumbai, sometime in the 2<sup>nd</sup> week of June 2023. The said FIR was registered as 00 FIR with the Malad Police Station. It appears that Nitin attended the said Malad Police Station on 8 to 9 occasions and thereafter, learnt that the said FIR has been transferred to Tardeo Police Station, Mumbai and numbered as C.R No.310/2023 for the alleged offences punishable under Sections 354A and 509 of the IPC, both bailable offences. It is not in dispute that the said FIR was registered with the Tardeo Police Station on **7<sup>th</sup> July 2023**. It appears that on the same day i.e. on 7<sup>th</sup> July 2023, the Tardeo Police issued a 41A notice to Nitin, pursuant to which, Nitin visited the said police station on

four occasions. It appears that on **17<sup>th</sup> July 2023**, Nitin and his advocate visited the Tardeo Police Station at **3:00 p.m.** As Nitin feared that he would be illegally arrested in bailable offences and for extraneous reasons, having regard to the demand made by one of the officers, he gave a written communication to the Senior Police Inspector, Tardeo Police Station, through his advocate, conveying his intention of furnishing and procuring bail. The said communication is at Exhibit `B' at page 13 of the petition. It appears that Nitin's advocate personally met the Senior Police Inspector and conveyed the aforesaid to him i.e. their intention to furnish bail, however, despite the same, Nitin was illegally arrested on **17<sup>th</sup> July 2023** at about **9:30 p.m.** Accordingly, a formal intimation of arrest was given to the petitioner, post mid-night. A copy of the intimation is annexed at Exhibit `C' at page 14 of the petition.

8           It appears that prior to Nitin's formal arrest by the police on 17<sup>th</sup> July 2023, his advocate approached the Court of

Metropolitan Magistrate at Girgaum, Mumbai, for obtaining a copy of the FIR, however, they were informed that the said FIR was yet to be filed before the learned Magistrate, as a result of which, they were unable to procure the copy of the said FIR.

9           According to the petitioner, when the advocate tried to impress upon the respondent No. 3 that Nitin was legally entitled to be released on bail, the offences being bailable and the failure to release Nitin would amount to illegal detention, compelling them to move the High Court, one of the advocates was asked to produce his identity card and was threatened with lodging of an NC and even an FIR under the IPC. It is the petitioner's case that despite cooperating with the investigation and despite the offences being bailable and despite offering to furnish bail in the bailable offences, the police deliberately and malafidely detained Nitin, without any justification.

10 In view of the illegal detention of the petitioner's husband-Nitin on **17<sup>th</sup> July 2023** at 9:30 p.m, the petitioner immediately approached this Court on the very next day i.e. on **18<sup>th</sup> July 2023**, by filing the aforesaid petition. The matter was mentioned on **18<sup>th</sup> July 2023** before us, at 10:30 a.m. In view of the submission made by the learned counsel for the petitioner i.e. of illegal detention of the petitioner's husband in bailable offences, we granted production of the papers at **2.30 p.m**, on the same day. We had asked the learned A.P.P to take instructions by 2:30 p.m.

11 In our detailed order dated 18<sup>th</sup> July 2023, we have recorded the submissions of the learned counsel for the petitioner in paras 2 to 4. It appears that the Officers of the Tardeo Police Station forwarded a copy of the FIR to the Court of the Metropolitan Magistrate, on the very same day i.e. on **18<sup>th</sup> July 2023 at 11:55 a.m**, although the FIR was lodged on **7<sup>th</sup> July 2023**, only after we kept the matter at 2:30 p.m, on 18<sup>th</sup> itself.



At 2:30 p.m, when the petition was taken up, learned A.P.P informed us that the petitioner's husband-Nitin was released by the officers at **11:59 a.m.** The said release clearly appears to be after the learned A.P.P was directed at 10:30 a.m, when the matter was mentioned, to take instructions and to ask the officers of the Tardeo Police Station to remain present at 2:30 p.m. Pursuant thereto, the officers from Tardeo Police Station were present before us at 2:30 p.m. As the allegations made by the petitioner were serious, impinging upon Nitin's right to liberty and fundamental rights, we, vide order dated 18<sup>th</sup> July 2023, issued notice to the respondents, returnable after two weeks i.e. on 1<sup>st</sup> August 2023. We also directed the respondent No. 2 to file an affidavit-in-reply.

12            On **1<sup>st</sup> August 2023**, when the matter came up for hearing, learned A.P.P tendered an affidavit of Shri Vivek Shende, Senior Police Inspector, Tardeo Police Station, Mumbai dated 1<sup>st</sup> August 2023. The said affidavit was taken on record and a copy

thereof, was served on the learned counsel for the petitioner. Learned counsel for the petitioner also tendered two affidavits; one affidavit of Nitin Sampat and an additional affidavit of the petitioner-Neelam Sampat. In both the affidavits, the details of what happened on 17<sup>th</sup> and 18<sup>th</sup> July 2023 have been set-out in detail. The high handedness and the conduct of the officers have also been set-out. The affidavit filed by Nitin not only reveals the circumstances under which he was illegally detained, but also how he was physically and mentally abused by the police. Nitin, in his affidavit, has stated that he was not only abused by the police, but was kept in a lock-up at Saat Rasta for the whole night i.e. the intervening night of 17<sup>th</sup> and 18<sup>th</sup> July 2023 with other criminals and even stripped by the police. According to Nitin's affidavit, he was taken to Saat Rasta Lock-up at about 1:00 a.m. and was kept there up to 11:00 a.m. on 18<sup>th</sup> July 2023. During the course of the hearing i.e. on 1<sup>st</sup> August 2023, learned counsel for the petitioner requested that the police be directed to preserve the CCTV footages of both the police stations i.e.

Tardeo Police Station and Saat Rasta Lock-up.

13 In view of the affidavits/additional affidavits tendered, learned A.P.P sought time to go through the affidavits/additional affidavits filed by the petitioner and her husband-Nitin. In the meantime, having regard to the serious allegations made against the respondents attached to Tardeo Police Station, we directed the DCP, Zone-III Shri Akbar Pathan, to preserve the CCTV footage of Tardeo Police Station from 17<sup>th</sup> July 2023 from 3:00 p.m. to 18<sup>th</sup> July 2023 till 3:00 p.m and that of Saat Rasta Lock-up from 18<sup>th</sup> July 2023 from 1:00 a.m. to 1:00 p.m.

14 On **1<sup>st</sup> August 2023**, we were also informed by the learned counsel for the petitioner that Nitin had received a call from one constable of Tardeo Police Station on 31<sup>st</sup> July 2023 at 10:41 a.m. from mobile No.xxxxxxxx. It was submitted that, Nitin was informed to meet ACP immediately, during the course

of the day, in connection with the C.R lodged against him; that Nitin contacted his advocate, pursuant to which, his advocate spoke to constable-Shri Mahadik and that the constable informed the advocate, that the police are expecting Nitin to sign a bond under Section 107 of the Code of Criminal Procedure (`Cr.P.C`); and, that Nitin should visit the police station in the afternoon. According to Nitin, when his advocate called the constable at 2:30 p.m. to confirm the timing, no reply was received. Learned counsel for the petitioner states that he (Advocate) has recorded the conversation between him (Advocate) and constable-Mahadik. In view of the same, we directed the learned A.P.P to take instructions, whether any such notice was issued under Section 107 of the Cr.P.C against Nitin or is in the offing. Accordingly, the matter was adjourned to 22<sup>nd</sup> August 2023.

15            On **30<sup>th</sup> August 2023**, when the aforesaid petition appeared, learned A.P.P sought time to file affidavit-in-reply, with respect to when the petitioner was taken to Tardeo Police Station

and thereafter, to Saat Rasta Lock-up and thereafter, when he was released, in view of the discrepancies in the timings stated by the learned counsel for the petitioner and the police. The said affidavit was to be filed before the next date i.e. 8<sup>th</sup> September 2023.

16 We have perused the three affidavits-in-reply filed by the police. In the affidavit filed by Shri Vivek Shende, Senior Police Inspector, Tardeo Police Station, Mumbai dated 1<sup>st</sup> August 2023, in paras 2, 4 and 5, it is stated as under :

*“2. At the outset I tender my unconditional apology for the action of investigating Officer arresting Husband of the petitioner in bailable offence. I say that the said officer was Probationary Officer and inadvertently arrested petitioner in connection with C.R. No. 310 of 2023 registered at Tardeo Police Station for offences punishable u/s 354(A), and 509 of IPC.”*

*“4. I say that after the said FIR was transferred to Tardeo Police Station the Investigation of the said case was assigned to WPSI Priyanka Kadam the said investigating officer had given notice under section 421(A) of CRPC to Petitioners Husband on 07/07/2023*

*to produce his Mobile for the purpose of investigation. I say that although the accused has attended the concerned police station he has not surrendered his mobile for investigation purpose therefore on 17/07/2023 after giving notice to the petitioners Husband, the concerned investigating officer inadvertently arrested the accused on 17/07/2023.”*

*“5. I say that immediately after it had come to the knowledge that the Petitioner Husband was arrested in bailable offence he was immediately released on bail on 18/07/2023. I once again tender my unconditional apology and henceforth will ensure that there is no violation of any fundamental right while arresting any person by the officers of Tardeo Police Station.”*

17 Two more affidavits were filed by Shri Akbar Ilahi Pathan, the Deputy Commissioner of Police, Zone-III, Mumbai, one dated **21<sup>st</sup> August 2023** and the second dated **6<sup>th</sup> September 2023**. The second affidavit was filed pursuant to the order dated 30<sup>th</sup> August 2023 passed by this Court for placing on record the timings as to when petitioner’s husband-Nitin was taken to Saat Rasta Lock-up.

18 In the first affidavit dated **21<sup>st</sup> August 2023**, the Deputy Commissioner of Police-Shri Akbar Pathan has stated that the CCTV Camera footage of Tardeo Police Station and Saat Rasta Lock-up was preserved, having regard to the order dated 1<sup>st</sup> August 2023 passed by this Court. It is further stated in para 3 of the said affidavit that having regard to the seriousness of the grievance made by the petitioner, the investigation of C.R. No. 310/2023 registered with Tardeo Police Station was immediately transferred to Nagpada Police Station for further investigation and that Police Inspector- Shri Kiran Chougule was investigating the said case and that Sr. Police Inspector of the said police station is monitoring the investigation of the said case. In para 4 of the said affidavit, it is stated that having regard to the serious allegations made by the petitioner and her husband in their affidavits, an inquiry has been initiated against the errant officials. The said inquiry is headed by Assistant Commissioner of Police, Tardeo Division and that the inquiry is still in progress. It is further stated in para 6 that no action under Section 107 of

Cr.P.C has been taken against the petitioner's husband.

19 In the affidavit of Shri Akbar Pathan, the DCP, Zone-III, Mumbai dated **6<sup>th</sup> September 2023** filed pursuant to the order dated 30<sup>th</sup> August 2023, it is stated that, on the basis of the analysis of CCTV footages of Tardeo Police Station and Saat Rasta Lock-up, there is a time difference of 6 minutes of actual time in the CCTV footage maintained at Tardeo Police Station and a time difference of 28 minutes of actual time and the CCTV footage maintained at Saat Rasta Lock-up. It is stated that the on **17<sup>th</sup> July 2023**, when the petitioner along with her husband-Nitin, advocate and others came to Tardeo Police Station, the CCTV time is mentioned as **16:04 hrs.** i.e. there is a time difference of +6 minutes of actual time (16:10 hrs.); that on **18<sup>th</sup> July 2023**, after Nitin was transferred to Saat Rasta Lock-up with police security from Tardeo Police Station, the CCTV time is mentioned as **01:04 hrs.** i.e. there is a time difference of +6 minutes of actual time (01:10 hrs.); that when Nitin was taken



to Saat Rasta Lock-up with police protection, the CCTV time is mentioned as **02:35 hrs.** i.e. there is a time difference of -28 minutes of actual time (02:07 hrs.); that when Nitin was taken out from Saat Rasta Lock-up with police protection, the CCTV time is mentioned as **11:32 hrs.** i.e. there is a time difference of -28 minutes of actual time (11:04 hrs.); that when Nitin was brought to Tardeo Police Station from Saat Rasta Lock-up with police, the CCTV time is mentioned as **11:13 hrs.** i.e. there is a time difference of +6 minutes of actual time (11:19 hrs.) and that when Nitin was released from Tardeo Police Station, after bail procedure, the CCTV time is mentioned as **13:38 hrs.** i.e. there is a time difference of +6 minutes of actual time (13:44 hrs.). In para 4 of the said affidavit, it is stated that an inquiry has been initiated and the errant officials who will be found guilty of dereliction of duty, will be punished.

20           It is thus clearly evident from the aforesaid facts, that the petitioner's husband-Nitin was detained illegally by the police

from around 9:30 p.m on 17<sup>th</sup> July 2023, till 1:00 p.m. on 18<sup>th</sup> July 2023, till the time, the police learnt of the petition filed in this Court. It is not disputed by the police that both the offences i.e. under Sections 354A and 409 of the IPC, with which Nitin was charged, were bailable. It is also not disputed that the petitioner and her husband had offered to furnish bail as contemplated under Section 436 of Cr.P.C.

21 No doubt, all the prayers are worked out, however, having regard to the peculiar facts, the question that arises for consideration is, whether the petitioner's husband is entitled to compensation for his illegal detention.

22 As noted above, the petitioner and her husband-Nitin, both have filed their additional affidavits dated 1<sup>st</sup> August 2023. Both, the petitioner and her husband-Nitin have, in detail, set-out the manner in which Nitin was treated and abused by the police.

23 Nitin, in his affidavit, has stated in detail the high-handedness of the officers of Tardeo Police Station as well as of those managing the affairs of Saat Rasta Lock-up, who are responsible for his mental and physical trauma, bordering on torture. He has stated that a complaint was filed by one Ms. `X' against him with the Malad Police Station, Mumbai, alleging offences punishable under Sections 354A and 509 of the IPC, as according to Ms. `X', he had spoken to her indecently, when she questioned about increase of fees from Rs. 2,500/- to Rs. 3,500/-. It appears that Nitin attended the Malad Police Station on a few occasions and met the concerned officer, alongwith his lawyer. The said FIR i.e. 00/2023 registered with the Malad Police Station was subsequently transferred to the Tardeo Police Station and numbered as C.R. No. 310/2023 for the alleged offences punishable under Sections 354A and 509 of the IPC.

24 Nitin, in his affidavit, has set-out the details of how

the officers at Malad Police Station and thereafter, the police at Tardeo Police Station and Saat Rasta Lock-up, treated him. He has also in detail, set-out the conduct of the officers of Tardeo Police Station on every occasion when he, his wife and family visited the said police station. It is stated that neither the copy of the FIR was made available to him at any point of time nor was it filed in any court and that the same was verified by his lawyer. He has stated in para 28 of his affidavit, that despite the offences being bailable, how the officer had reprimanded him for leaving the town (when he had gone for his daughter's concert to Bengaluru), despite having cooperated with the investigation and there being no restrictions on his travel. As far as the incidents of 17<sup>th</sup> and 18<sup>th</sup> July 2023 are concerned, in paras 31 to 54, the incidents and the conduct of the officers has been spelt out in detail. He has also stated how the officers abused him and that despite the offences being bailable, even refused to listen to his lawyer, who pleaded for bail, the offences being bailable. He has stated that when his lawyer stated that they would be constrained

to approach the High Court, one of the officer threatened to lodge an NC and even an FIR against him, under the provisions of the IPC. He has stated that on **17<sup>th</sup> July 2023**, he was detained by the Tardeo Police Station **from 9:30 p.m. till 1:00 a.m. on 18<sup>th</sup> July 2023** and thereafter, was lodged at Saat Rasta Lock-up upto **11:00 a.m. on 18<sup>th</sup> July 2023**. He has stated that the police at Tardeo Police Station asked him to give his belt, ring, wallet, napkin, phone and everything that he possessed to his wife and asked him to sit in the detention room. They noted his personal details, took his pictures and told him to raise his T-shirt, to see if he had any cuts or marks or tattoo. Thereafter, from Tardeo Police Station, he was taken to Nair Hospital, where his Covid test was done and he was kept in Saat Rasta Lock-up. He has stated specifically in para 39, that in the said lock-up, the officers present there asked him to remove his clothes, insisted that he is strip naked and forced him to remain in that position for some time and after a while, allowed him to put on his underwear. He has stated that it was extremely humiliating and embarrassing and

that he had no idea what was happening. He was also compelled to remove his *Janoi* (religious thread). He has stated that this conduct shattered him, leading to depression. He has further stated that after much persuasion, he was given his pants through the bars, however, he was not given his T-shirt, resulting in several mosquito bites. He has further stated that he was made to sit in a corner without food or water and when water was sought, he was given water, which was not fit for consumption. He has stated that despite asking the police, that he is required to take BP medicine, on 18<sup>th</sup> July 2023 morning, the police paid no heed and finally, in view of repeated requests, allowed him to take his medicine. He has further stated that on **18<sup>th</sup> July 2023** at around **11:00 a.m**, three personnel came to pick him up and took him back to Tardeo Police Station threatening him that, “*your lawyer has told Priyanka madam see you in the court aisa kyon bola re?*”. Again, he has stated that after some time, when at Tardeo Police Station, he saw movements and police panicking and discussing some steps and even offered him food and that at

around 1:00 p.m, they asked him to come out and made him sign a bond, which had some details. He has stated that pursuant thereto, he went home. According to Nitin, he did not have money to take a cab and hence, when he reached home, was required to borrow money from a shop, below his house. When he went home, he learnt that his family was running between Court, for getting him released. Nitin has stated that throughout his arrest/detention, police insisted that bail was not possible and refused bail, in bailable offence. He has stated that thereafter, on 18<sup>th</sup> July 2023, probably after receiving notice from the High Court, the police of Tardeo Police Station released him, after making him sign on a bond paper. He has further stated that his detention in Tardeo Police Station and in the lock-up, at Saat Rasta, has scarred him, both emotionally and mentally. He has further stated that thereafter, the police called him again to sign a bond, which he later learnt, through his lawyer, was a bond under Section 107 of the Cr.P.C.

25           The additional affidavit of the petitioner, who is Nitin's wife, is on similar lines with respect to the conduct, behaviour of the officers at Tardeo Police Station as well as Saat Rasta Lock-up, the harassment meted to Nitin by the officers and the trauma suffered by her husband-Nitin.

26           Nitin was not only detained by the police of the Tardeo Police Station in bailable offences, but was sent to Saat Rasta Lock-up and made to stay there the entire night, despite the offences being bailable and despite offering to give bail. As noted above, Nitin was asked to strip and made to sit in the lock-up with other criminals. The CCTV footage also evidences the fact, that Nitin was sent to Saat Rasta Lock-up and was detained the whole night in the lock-up. This is a case, where there is gross violation of Nitin's right guaranteed to him under Article 21; his right to be released on bail under Section 436 Cr.P.C, in bailable offences; and a clear violation of the Apex Court



judgments in the case of *Arnesh Kumar (Supra)* and *Satender Kumar (Supra)*. Ultimately, Nitin was made to sign a bond, when the police learnt of the filing of this petition, and was released. The same ought to have been done earlier, before Nitin's arrest and detention, when he offered to furnish bail. There was no justification for Nitin's arrest, more particularly, when the offences were bailable and he had offered to furnish bail.

27           The Supreme Court has time and again frowned on unnecessary arrests even in non-bailable offences. As observed by the Apex Court in *Joginder Kumar v. State of U.P.*<sup>3</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, 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*

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3 (1994) 4 SCC 260

*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 bonafides 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)*

28 In *Arnab Manoranjan Goswami v. State of Maharashtra & Ors.*<sup>4</sup>, in para 68, the Apex Court observed as under :

*“68. .... The doors of this Court cannot be closed to a citizen who is able to establish prima facie that the instrumentality of the State is being weaponized for using the force of criminal law. Our courts must ensure that they continue to remain the first line of defence against the deprivation of the liberty of citizens. Deprivation of liberty even for a single day is one day too many. ....”*

*(emphasis supplied)*

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4 (2021) 2 SCC 427

29 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.P.C, 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 (Supra)*].

30 It is pertinent to note, but for the petitioner approaching this Court immediately on the next day i.e. on 18<sup>th</sup> July 2023 and production being granted with a direction to the learned A.P.P to take instructions from the Tardeo Police Station,

we are afraid, Nitin could have been detained for a longer period. Not everyone has the means, the capacity and the wherewithal to approach the Court and to even take cudgels with the police.

31 In the peculiar facts, although not prayed, we are of the opinion that compensation ought to be awarded to the petitioner's husband not only for violation of law, but also for violation of his fundamental right under Article 21 of the Constitution i.e. right to live with dignity. The Courts are not powerless or helpless, while exercising their powers under Section 226, when on the face of it, there is infringement/violation of the fundamental right of a citizen. The grave injustice caused to the petitioner's husband-Nitin, no doubt, cannot be compensated by money alone, however, granting some compensation and directing some action to be taken against the errant officers, would offer some solace/balm to the wounds, which the petitioner's husband and his family has suffered. Article 21 of the Constitution guarantees right to life

and liberty and the said right includes the right to live a dignified life. The police, as noted above, have on the face of it, violated this fundamental right to life and liberty guaranteed to Nitin under Article 21 of the Constitution.

32 It is also pertinent to note, that although the FIR was lodged on **7<sup>th</sup> July 2023**, the copy of the FIR was filed in the Court of the learned Magistrate only on **18<sup>th</sup> July 2023** at 11:55 a.m, on the day when the matter was listed before us. The right to compensation is palliative for the unlawful acts of instrumentalities, which act in the name of public interest and which present for their protection the powers of the State as a shield. The rights of individuals must be recognized by the instrumentalities of the State and that any abuse or misuse of power, should attract consequences. Hence, in the peculiar facts, the State must repair the damage done to the petitioner's husband's right, by its officers. Ofcourse, it is for the State to take recourse against those officers responsible for the said violation.

The facts as narrated, smacks of police high handedness. It smacks of their insensitivity. It reveals their lack of knowledge of the legal provisions and judgments of the Apex Court, vis-a-vis grant of bail. This action of the police has resulted in unjustified trauma-physical, emotional and mental to the petitioner's husband-Nitin.

33 As noted above, it is not disputed that the offences were bailable and that the police ought to have granted bail to Nitin under Section 436 Cr.P.C. Infact, in the affidavit filed by Shri Vivek Shende, Senior Police Inspector, Tardeo Police Station, Mumbai, he has tendered an unconditional apology and ensured that henceforth, there will be no violation of any fundamental right while arresting any person by the officers of Tardeo Police Station.

34 Although, we accept the unconditional apology tendered in the affidavit dated 6<sup>th</sup> September 2023 filed by Shri

Akbar Pathan, the DCP, Zone-III, Mumbai, and an assurance that there will be no violation of the fundamental rights while arresting the person, in the facts, we deem it necessary and imperative to award costs to Nitin for the brazen acts of the officers. We, as constitutional courts, cannot be oblivious of the gross abuse of law, in this case and would fail in our duty, if the wrong is not redressed.

35 Accordingly, having regard to the peculiar facts of this case, we deem it appropriate to pass the following order :

**ORDER**

- (i) We direct the State Government to pay compensation of Rs. 2,00,000/- (Rupees Two Lakhs) to the petitioner's husband-Nitin Sampat, within 6 weeks from today.
  
- (ii) The respondent No. 4- The Commissioner of Police, Mumbai, to appoint an Officer not below the rank of Deputy Commissioner of Police, to conduct an inquiry with

regard to the incidents and conduct of the police officers of the Tardeo Police Station as well as the Saat Rasta Lock-up. The petitioner and her husband to be heard in the inquiry so conducted. The inquiry to be completed within eight weeks.

(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's husband-Nitin and for the actions alleged in the lock-up.

36 Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

37 A copy of this Judgment and Order be sent to the Director General of Police, State of Maharashtra and the Commissioner of Police, Mumbai, so as to enable them to issue



appropriate guidelines/directions to Police Stations, with respect to grant of bail in bailable offences.

38 Stand over to **12 weeks**, for recording compliance of the payment of compensation and for presentation of the inquiry report and steps taken for recovery of the compensation amount, if any, from the erring officer/officers.

39 All concerned to act on the authenticated copy of this Judgment.

**GAURI GODSE, J.**

**REVATI MOHITE DERE, J.**