



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION (ST.) NO.23953 OF 2024

VASANTHA PERAMPALLY NAYAK)
Age : 54 years, Indian inhabitant,)
presently residing at 110-7C/8 TT Road)
Kundapur, Udupi, Karnataka – 576 201.) Petitioner

V/s.

1. STATE OF MAHARASHTRA)
Through the Additional Chief Secretary (Home))
Home Department, Second Floor,)
Madam Cama Marg,)
Hutatma Rajguru Chowk, Mantralaya,)
Mumbai – 32) ... Respondent No.1
2. SR. INSPECTOR OF POLICE)
Bandra Police Station) ... Respondent No.2
3. PRADEEP KERKAR)
Inspector of Police,)
through the Bandra Police Station) ... Respondent No.3

4. KAPIL SHIRSATH)
Police Sub Inspector)
Through the Bandra Police Station) ... Respondent No.4

WITH

INTERIM APPLICATION (ST.) No. 24381 OF 2024
IN
CRIMINAL WRIT PETITION (ST.) NO.23953 OF 2024

MR. GURUDUT KAMATH)
Age : 52 years,)
26, Aradhana, 11/5, Off Turner Road,)
Bandra (West),)
Mumbai – 400 050) Intervenor

IN THE MATTER OF :

VASANTHA PERAMPALLY NAYAK)
Age : 54 years, Indian inhabitant,)
presently residing at 110-7C/8 TT Road)
Kundapur, Udipi, Karnataka – 576 201.) Petitioner

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through the Bandra Police Station) ... Respondent No.3

4. **KAPIL SHIRSATH**)

Police Sub Inspector)

Through the Bandra Police Station) ... Respondent No.4

Mr. Abad Ponda, Senior Advocate a/w. Ms.Dhruti Chheda and Mr.Anukul Seth, Advocate for the Petitioner.

Mrs. P.P. Shinde, Addl.PP, for the Respondent – State.

Mr.Faisal Shaikh a/w Mr. Shailendra Agharkar, Mr. Rashid Sayyed and Mr. Omkar Shah i/b Rizwan Merchant and Associates, Advocate for the Intervenor.

**CORAM : REVATI MOHITE DERE &
SANDESH D. PATIL, JJ.**

RESERVED ON : 9TH SEPTEMBER, 2025.

PRONOUNCED ON : 29TH SEPTEMBER, 2025.

JUDGMENT (Per Sandesh D. Patil, J.) :-

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable with the consent of the parties and is taken up for final disposal. Learned Addl. APP waives service on behalf of the Respondent – State and Mr. Faisal Shaikh waives notice on behalf of his Respondent No.2.
3. The petitioner has filed the aforesaid petition inter alia, seeking a declaration that the arrest of the petitioner on 23.10.2024 is illegal and without authority of law; for initiation of a departmental enquiry against the respondent Nos. 3 and 4; and for compensation from the respondent - State towards deprivation of Petitioner's liberty and for the humiliation and stigma faced by him.
4. According to the petitioner, he and the first informant are maternal cousins; that they were engaged in the business of perfume oils since 1999; and, that they had established a partnership firm, namely M/s. Shri Raksha Fragrances in 2000. It is the petitioner's case, that there was a dispute in the partnership firm and hence, he by virtue of a deed of

reconstitution of partnership deed dated 17.8.2013 had retired and the first informant along with one Mr. Shyam Sundar Nayak agreed to continue with the partnership business. It is further the petitioner's case that the police have with oblique motives invoked section 409 in the F.I.R. dated 26.9.2024 alongwith section 406, 420, 465, 477A read with section 34 of the Indian Penal Code, though no offence was made out either under section 409 or any other sections. It was contended that if section 409 was not invoked the other provisions would fetch a maximum punishment up to 7 years and as such the provisions of section 41A of the CRPC (section 35 (3) of the BNS) would squarely be applicable, in view of the Apex Court's judgment in *Arnesh Kumar versus State of Bihar* reported in *(2014) 8 SCC 273* . It was contended that the respondent Nos.3 and 4 wanted to arrest the petitioner in gross abuse of power and hence Section 409 was invoked, pursuant to which the petitioner was arrested in Karnataka and granted transit remand on 23.10.2024 for two days; that thereafter, the petitioner was remanded to police custody by the Magistrate on 25.10.2024 till 4.11.2024. The petitioner was thus in custody for a period of 20 days. The petitioner pointed out the observations made by the learned Magistrate in his order in paragraph Nos. 20 to 22, wherein, the learned Magistrate had noted that the petitioner had resigned from the partnership since 2013, and the whole affairs were managed by his brother Shyam Sundar and the informant. It was contended that, thus the petitioner's arrest was done malafidely and illegally resulting in the petitioner remaining behind bars for 20 days. It is submitted that the police have acted highhandedly and misused their power of arrest.

5. The learned Additional PP appearing for the respondent-State initially tried to support the action of the police, in particular, the acts of the respondent Nos.3 and 4. The learned Additional PP appearing for the State, thus sought for dismissal of the petition.

6. During the course of the hearing, we directed the learned Additional PP appearing for the respondent state to produce the files containing the notings in connection with the registration of the first information report. Accordingly two files containing the notings were placed before us.

7. Upon perusal of the same, it was revealed that the first informant had initially filed a representation with the Economic Offences Wing, Mumbai. The said representation was transferred to the Bandra Police Station for appropriate action. Later on preliminary enquiry was conducted by the Police inspector, Bandra Police Station i.e. respondent No.3. The respondent No.3 after carrying out a preliminary enquiry submitted his report to the Deputy Commissioner of Police, Zone- IX, Mumbai, that there appears to be a prima facie case against the petitioner and another person, and therefore permission be granted to register an offence under the provisions of **Sections 406, 420, 465, 477A** read with **Section 34** of the Indian Penal Code. The Senior Police Inspector i.e. respondent No.4 also opined that offences be registered under **Sections 406, 420, 465, 477A** read with **Section 34** of the Indian Penal Code and accordingly, he joined the respondent No.4 to make a application for

seeking permission to register an FIR under the aforesaid provisions and conduct investigation. The Assistant Commissioner of Police, Bandra also concurred with the opinion expressed by the respondent Nos.3 and 4. The Law Officer, Zone-IX, Bandra also gave his opinion that crime may be registered against the petitioner under **Sections 420, 406, 465, 477A** read with **Section 34** of the Indian Penal Code. Based on the aforesaid opinions, on 24.09.2024, the DCP, Zone-IX, Bandra directed registration of an FIR and sought a Bi-weekly progress report. The Assistant Commissioner of Police Bandra Division, therefore, based on the order passed by the Deputy Commissioner of Police, Zone-IX, Mumbai directed registration of an FIR.

8. It is thus clearly evident that permission was given by the Deputy Commissioner of Police, Zone-IX, Mumbai to register an FIR for the aforesaid offences. Needless to say, that the said permission was given in terms of the application made by the respondent Nos.3 and 4, which was for permission to register an FIR under **Sections 420, 406, 465, 477A, 34** of Indian Penal Code.

9. It further appears that the respondent No. 4 registered the First Information Report vide C.R. No. 1379 of 2024, on 26.9.2024 with the Bandra Police Station, Mumbai not only under the provisions of **Sections 420, 465, 477A** read with **Section 34** of the Indian Penal Code, but also under **Section 409** of the Indian Penal Code. It is pertinent to note and as evident from the file notings that an FIR was directed to be

registered for the offences other than the offence punishable under Section 409. It is also pertinent to note that permission to register an FIR was never sought by the respondent Nos.3 and 4 for the offence punishable under section 409. It is also clear from the record i.e. file notings that the DCP and the ACP had granted permission to register an FIR for the offences under Section 406, 420 & 477A of the Indian Penal Code, and not under Section 409. It is evident from the file notings that the higher authorities were never told that an offence was also to be registered under Section 409 of the Indian Penal Code alongwith other Sections for which permission was granted. This being the position, it was absolutely improper and illegal on the part of the respondent Nos.3 and 4 to invoke section 409 in the first information report, unilaterally without seeking permission of the superiors, as required.

10. It further appears that the respondent No.4 thereafter, preferred another application seeking permission to arrest the accused/petitioner under the provisions of section 409, 420, 406, 465, 477A, 34 of the Indian Penal Code. It appears that the Deputy Commissioner of Police as well as the Additional Commissioner of Police granted permission based on the application made by the respondent Nos.3 and 4. It appears that the previous notings were not brought to the notice of the higher authorities of respondent Nos.3 and 4 while granting permission to arrest.

11. Thus, on a perusal of the records, it is evident that despite permission being granted to register an FIR only for the offences

punishable under sections 420, 406, 465, 477A, 34 of the Indian Penal Code, which were punishable upto 7 years or less, the respondent Nos.3 and 4 for reasons best known acted contrary to the permissions given to them, by adding Section 409 of the Indian Penal Code.

12. We find substance in the contention of the petitioner that the said act on the part of the respondent prima facie appears to be intentional and for reasons best known to them, to get the petitioner arrested. Had the respondent No. 4 not invoked **Section 409** of the Indian Penal Code, all other offences were fetching punishment upto a maximum of seven years and the respondent Nos.3 and 4 would be bound by the judgment of the Apex Court in the case of *Arnesh Kumar versus State of Bihar reported in (2014) 8 SCC 273*. The entire exercise appears to have been undertaken by the respondent Nos.3 and 4 to avoid sending notice under section 41 A of the Indian Penal Code to the petitioner. The decision to arrest was taken by the respondent No.4 between 27.09.2024 and 29.09.2024, in as much as the respondent No.4 had applied to the superior officer on 30.09.2024 for permission to arrest. The superior officers of Respondent No.4 were not made aware that there was no permission granted by them to register FIR under Section 409 of I.P.C. The entire exercise prima facie appears was not done in good faith and was done in colourable exercise of power by the respondent Nos.3 and 4.

13. The Deputy Commissioner of Police, Zone-IX, Mumbai who was asked to remain present before us, when questioned, having gone

through the file notings informs us that the respondent Nos.3 and 4 could not have added **Section 409** unilaterally, without seeking permission of the superiors. The Deputy Commissioner of Police, Zone-IX, Mumbai informs us that permission to register an FIR was given only for the offence punishable under **Sections 420, 406, 465 and 477A** read with **Section 34** of the Indian Penal Code.

14. We are not entering into the other contentions raised by the petitioner with respect to the merits of the first information report. We are restricting ourselves only to the issue of illegal arrest and the reliefs sought in this petition.

15. The Division Bench of this Court in **Criminal Writ Petition No.2436 of 2023** in the matter of ***Neelam Nitin Sampat V/s. State of Maharashtra***, in Paragraph No. 27 has observed as under :-

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.3, 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 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)

16. In ***Satinder Kumar Antil versus CBI*** , the Apex Court observed that Section 41 and Section 41A are facets of Article 21 of the Constitution of India and that the investigating agencies are duty bound to comply with the mandate of Section 41 and 41A of the Code, that although the police officer is vested with the power to arrest individuals,

the police officer must be satisfied that 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 accused 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 the court without arresting them. The police officers are duty bound to apply their mind to the case.

17. In the facts of the case, we find that the respondent Nos.3 and 4 have deliberately, in order to circumvent issuance of notice under the provisions of Section 41A of the Indian Penal Code invoked Section 409 in the present case. This obviously was sans the permission of the superior authorities. The facts in hand, smacks of police high handedness. The petitioner was thus arrested by the respondent Nos.3 and 4, by inserting Section 409, a non bailable Section, which entails punishment upto life imprisonment, without there being any direction to register an FIR under Section 409. The file notings are eloquent with respect to the same. We find that there has been gross abuse of law, resulting in petitioner's arrest and his custody of 20 days in jail. We, as Constitutional Courts cannot be oblivious to the same. Arrest of an individual is a serious matter. Arrest brings humiliation, curtails freedom and casts scars forever. The Apex Court has time and again frowned on unnecessary arrests even in non-bailable offences.

18. In view of the above, we hold and declare that the arrest of the Petitioner on 23.10.2024 by the respondents, was illegal and without lawful authority.

19. Having observed the same, we are of the considered view that this is a fit case for awarding compensation to the Petitioner by the State, on account of the petitioner's illegal arrest. Accordingly, we allow the petition and pass the following order:-

- (i) We direct the State Government to pay compensation of Rs. 1,00,000/- (Rupees One Lac only) to the petitioner within a period of six 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 enquiry with respect to the arrest of the petitioner by the concerned police officers. Needless to state, that the petitioner shall be entitled to be heard. The enquiry to be completed within a period of eight weeks from the date of receipt of this order. The compensation so paid, shall be recovered after a full-fledged enquiry, from the salary of the person/persons found responsible for the petitioner's illegal arrest.
- (iii) Rule is made absolute in the aforesaid terms. No order as to costs.

(iv) Petition is disposed of accordingly.

20. In view of disposal, of the Writ Petition, nothing survives in the Interim Application. The same is disposed of accordingly.

21. List the matter on **3rd October 2025** under the caption 'For Directions'.

22. For recording compliance of-(i) payment of compensation; (ii) submission of the enquiry report, and (iii) steps taken for recovery of the compenstion amount from the erring officers, list the matter on **4th December 2025**.

All the concerned parties to act on the authenticated copy of this order.

(SANDESH D. PATIL, J.) (REVATI MOHITE DERE, J.)

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