

Shailaja / Uday Jagtap

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

CRIMINAL WRIT PETITION NO. 300 OF 2023

Venugopal Nandlal Dhoot	]	
lodged at Arthur Road Jail	]	..Petitioner

Vs.

1. Central Bureau of Investigation	]
Banking Securities and Fraud	]
Branch.	]

2. State of Maharashtra	]	..Respondents
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Mr. Sandeep S. Ladda a/w Ishani Khanwilkar, Viral Babar, Adnan A. Ansari, Adesh Jadhav and Sarvesh Dixit, for the Petitioner.

Mr. Raja Thakare, Senior Advocate a/w Mr. Kuldeep Patil, Ms. Saili Dhuru, Akash Kavade and Siddharth Jagushte for the Respondent No.1-C.B.I.

Ms. P.P. Shinde, A.P.P, for Respondent No.2-State.

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CORAM	: REVATI MOHITE DERE & PRITHVIRAJ K. CHAVAN, J.J.
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RESERVED ON	: 13th JANUARY, 2023.
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PRONOUNCED ON : 20th JANUARY, 2023.

ORDER: [Prithviraj K. Chavan, J.]:

1. By this petition, under Article 226 of the Constitution of

India and under section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C"), the petitioner has made following prayers;

(a) That this Hon'ble Court be pleased to quash and/or setting aside the FIR RCBD1/2019/E/001, Dt. 22nd January, 2019 u/sec. 7, 13 (2) r/w 13(1) & (d) of PC Act, 420 & 120B of IPC, being investigated by CBI, and the further investigation be stayed;

(b) That this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Writ of Certiorari, or any other appropriate Writ, order or direction under Article 226/227 of the Constitution of India, quashing and/or setting aside the Orders of the Hon'ble City Civil and Sessions Court, CBI Special Judge dated 26th December, 2022, 28th December, 2022 and 29th December, 2022 in FIR RCBD1/2019/E/001, Dtd. 22nd January 2019 u/sec. 7, 13 (2) r/w 13 (1) & (d) of PC Act, 420 & 120B of IPC, being investigated by CBI.

(c) That this Hon'ble Court be pleased to declare that the arrest and remand to custody of the Petitioner was arbitrary, illegal, without following due procedure of law and in gross violation of Sections 41 and 41A of the CRPC and Article 14, 19 (1) (d) and 21 of the Constitution of India;

(d) That pending hearing and final disposal of the present Petition, this Hon'ble Court be pleased to stay the operation of the Orders of the Hon'ble City Civil and Sessions Court, CBI Special Judge, Mumbai dated 26th December 2022, 28th December 2022 and 29th December 2022 in R.A No.1271/2022 pursuant to FIR RCBD1/2019/E/001, Dtd. 22nd January 2019 u/sec. 7, 13(2) r/w 13 (1) & (d) of PC Act, 420 & 120B of IPC, being investigated by CBI. against the Petitioner and release the Petitioner on bail, on such terms and conditions as this Hon'ble Court may deem fit, necessary and/or proper in the facts and circumstances of the present case;

2. By way of interim relief, the petitioner seeks his release from custody, pending the hearing and final disposal of the petition.

3. Learned Counsel for the petitioner - Mr. Ladda and learned Special P.P, Mr. Raja Thakare have restricted their arguments only on prayer clause (c) of the petition, as above.

4. A few facts germane for considering grant of interim relief are as follows.

5. The petitioner is the former Chairman and Managing Director of the Videocon Group of Companies. On 22nd January, 2019, a case was registered against (a) Videocon International Electronics Limited, (b) Videocon Industries Limited, (c) the petitioner - Venugopal Nandlal Dhoot (d) Smt. Chanda Kochhar (e) Shri Deepak Virendra Kochhar (f) M/s. NuPower Renewables Limited, (g) M/s. Supreme Energy Private Limited alongwith some unknown private persons and unknown public servants under section 120-B r/w section 420 of the I.P.C and under section 7, 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act (for short "P.C Act").

6. An F.I.R was registered on the basis of a preliminary inquiry conducted by the respondent No.1 – C.B.I (for short “respondent No.1”) bearing PEBD1/2017/E/0001 dated 8th December, 2017 at New Delhi against the accused persons on the premise that during the year 2011-2012, credit facilities of about Rs.3,250/- crores were sanctioned by the I.C.I.C.I Bank in violation of banking regulations and credit policy of the bank to M/s Trend Electronics Limited, M/s. Century Appliances Limited, M/s. Kail Limited, M/s. Value Industries Limited and M/s. Evan Fraser & Co., India Limited. All companies belonging to Videocon Group were promoted by the petitioner. We are not touching to the merits of the case.

7. On 31st January, 2019, ECIR/02/HIU of 2019 was registered by Directorate of Enforcement (for short "E.D."), New Delhi against the petitioner, Chanda Deepak Kochhar and Deepak Virendra Kochhar. The petitioner was summoned by the E.D and the respondent No.1. In the month of February, 2021, the E.D. completed it's investigation and filed a prosecution complaint without arresting the petitioner.

8. On 12th March, 2021, Sessions Court granted bail to the

petitioner in the P.M.L.A Special Case No.915 of 2020. The petitioner was summoned by respondent No.1, time and again, since 2017, for the purpose of investigation. On 15th December, 2022, respondent No.1 issued a notice under section 41-A of the Cr. P.C calling upon the petitioner to appear in it's office at New Delhi on 19th December, 2022 for questioning in the matter of the aforesaid F.I.R. The Petitioner sent Whats App message to the Investigating Officer Mr. Nitesh Kumar informing him his correct email id and requested to send him summons to attend the office on 21st December, 2022 instead of 19th December, 2022, due to his medical pre-schedule appointments.

9. The petitioner attended the office of the respondent No.1 at New Delhi on 21st December, 2022. However, he was asked to attend the office on 22nd December, 2022. Accordingly, the petitioner had attended the office of the respondent on 22nd December, 2022 at New Delhi. He was again summoned on 23rd December, 2022, however, since he was already called by the E.D. on 23rd December, 2022, he informed the Investigating Officer of respondent on WhatsApp to that effect.

10. Meanwhile, on 23rd December, 2022, other accused named in F.I.R viz: Chanda Deepak Kochhar and Deepak Virendra Kochhar were arrested by the respondent pursuant to an order of the City Civil Court. On 24th December, 2022, respondent No.1 issued a notice under section 41-A of the Cr. P.C summoning the petitioner to appear before it's office in Mumbai on 25th December, 2022. A notice was pasted on the wall of the petitioner's office building in Mumbai. The petitioner resides at Aurangabad. When the petitioner came to know about pasting of such notice on the wall of his office at Mumbai, he addressed an email to the respondent No.1 in response to the notice dated 24th December, 2022, *inter alia*, informing that he learnt about notice under section 41A for his appearance on Sunday i.e on 25th December, 2022.

11. On 25th December, 2022, respondent No.1 issued a notice under section 41-A of the Cr.P.C calling upon the petitioner to appear in it's office in Mumbai on 26th December, 2022 at 9.00 a.m for questioning in subject FIR. When the petitioner appeared in the office of the respondent No.1 at Mumbai on 26th December, 2022 at 9.00 a.m, he was made to undergo RTPCR test. After that, the petitioner was arrested by respondent No.1. He was produced

before the Special Judge, C.B.I, City Civil and Sessions Court, Mumbai on the same day.

12. The petitioner's Advocate moved two applications for declaring the arrest of the petitioner illegal and to grant ad-interim bail for non compliance of due procedure under section 41-A of the Cr.P.C and to provide the petitioner necessary medication. The learned Special Judge, C.B.I, however, declared the petitioner's arrest legal by remanding him to the custody of the respondent till 29th December, 2022. By an order dated 29th December, 2022, Special Judge, C.B.I, Mumbai extended the petitioner's remand till 10th January, 2023. The special Judge, C.B.I, City Civil and Sessions Court, Mumbai, on 5th January, 2023 considered the petitioner's application challenging the petitioner's arrest under section 41 and 41-A of the Cr. P.C and rejected the same by stating that the said application has become infructuous.

13. We have heard Mr. Ladda, learned Counsel for the petitioner and Mr. Thakare, learned Special P.P, for respondent No.1.

14. Learned Counsel for the petitioner has invited our attention

to the application seeking Police (CBI) Custody remand of the petitioner by the respondent, more particularly, to paragraph 9 of the application, which reads thus;

"That today FIR named accused Shri V.N. Dhoot, Managing Director of Videocon Group (A-3), has been arrested, as he has not been co-operating with the investigation and despite issue of Notices u/s 41A CrPC, he did not appear before the IO on 23.12.2022 and 25.12.2022. Further, there is inconsistency in his statement. (Arrest Memo and personal search memo enclosed). Medical examination of Shri V.N. Dhoot (A-3) has been got conducted through Govt. Medical Officer (Medical Report enclosed). He is produced before this Hon'ble Court".

15. The Counsel would submit that the application does not indicate that the petitioner did not appear before the respondent. The Investigating Officer had merely stated that the petitioner has not been co-operating with the investigation, without mentioning any detail particulars as to how there was non co-operation from the petitioner in the investigation. There are no particulars as regards so-called inconsistencies in the statements. The learned Special Judge, C.B.I, according to the learned Counsel, has grossly erred in not adhering to the mandate of the Supreme Court in case of **Arnesh Kumar vs State of Bihar**¹ and **Satender Kumar Antil vs**

¹ (2014) 9 SCC 273

CBI². The arrest and consequent remand of the petitioner to the custody of the respondent No.1 is in total violation of the tenets of the Cr.P.C and the procedure prescribed in section 41 and 41-A of the Cr.P.C. The Counsel would argue that the impugned orders passed by the Special Judge, C.B.I, are mechanical *sans* application of mind and in violation of principles of natural justice. The learned Counsel would also submit that the remand application dated 26th December, 2022 does not give particulars as to what full and true facts were not disclosed by the petitioner for the purpose of making proper investigation and for taking the case to its logical end. The Counsel would emphasize that since the notice under section 41-A of Cr.P.C came to be issued, which obviously means that the respondent did not want to arrest the petitioner. As such, the learned Counsel would pray for grant of interim bail to the petitioner.

16. Mr. Thakare, learned Special P.P. appearing for the respondent No.1, on the other hand, would submit that the cases investigated by the E.D. are altogether on different footing i.e. only in respect of money laundering, whereas the investigation by the C.B.I is on a

2 (2022) 10 SCC 51

larger canvass, especially, when section 120B of the I.P.C and the sections under Prevention of Corruption Act are invoked. According to Mr. Thakare, magnitude and dimensions of the offences and it's investigation needs sufficient time and the Investigating Agency is required to unearth and investigate each and every financial aspect in a meticulous manner. There are innumerable transactions in the given case. It is, therefore, obvious that the Investigating Agency would require a considerable time to collect the entire material which had already started in the year 2019. As such, he justified the arrest of the petitioner after three years. According to Mr. Thakare, had the petitioner been arrested in the year 2019 itself, the Investigating Agency could not have completed it's investigation effectively and meaningfully within ninety days period, resulting into securing default bail by the petitioner.

17. Mr. Thakare would further submit that during investigation, evidence is required to be collected. During interrogation, series of questions are put to the accused who are placed in their custody for a considerable period of time and they are subjected to questioning in an aggressive manner. Mr. Thakare has invited our attention to the impugned order dated 26th December, 2022 justifying the

observations made by the learned Judge who had carefully gone through the case diary and rightly remanded the petitioner in the custody of the respondent No.1 till 28th December, 2022 in light of the fact that he had not been co-operating with the Investigating Agency despite receiving several notices to attend the investigation. Learned Judge, *inter alia*, observed that there was due compliance of the provisions of section 41 and 41-A of the Cr.P.C. Mr. Thakare has placed reliance upon a judgment of the Supreme Court in case of **State represented by the C.B.I Vs. Anil Sharma**³. He invited our attention to paragraph 6 of the said judgment which is extracted below:-

"We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favorable order under section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to

3 AIR 1997 SC 3806

presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders”.

18. It is submitted that on 22nd December, 2022, the petitioner could not be confronted before the other accused viz. Chanda Kochhar and Deepak Kochhar since the petitioner remained absent on 23rd December, 2022. He remained absent on 25th December, 2022 also. However, on 26th and 27th December, 2022, the petitioner and the Kochhars' were confronted before each other. As such, Mr. Thakare strongly objected granting any interim relief to the petitioner.

19. As noted earlier and as agreed between the learned Counsel for the parties, this petition is heard only on a limited point of interim relief sought i.e. for interim bail on the premise that the petitioner's arrest and detention with the respondent No.1 is in contravention of the statutory provisions and the guidelines enunciated in the judgments of *Arnesh Kumar (supra)* and *Satender Kumar Antil (supra)*.

20. Before we proceed to decide as to whether the petitioner's

arrest and consequent remand is in consonance with Section 41 and 41-A of the Cr. P.C, it would be apposite to reproduce the relevant provisions and judgments on this aspect.

“41. When police may arrest without warrant - (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) 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 punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

ii) the police officer is satisfied that such arrest is necessary-

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement,

threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer, or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured;

and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate."

41-A. Notice of appearance before police officer. - *(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing 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, to appear before him or at such other place as may be specified in the notice.*

(2) *Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.*

(3) *Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.*

(4) *Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.*

“46. Arrest how made.- (1) *In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.*

Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.

(2) *If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.*

(3) *Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.*

(4) *Save in exceptional circumstances, no woman shall be*

arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

“60-A. Arrests to be made strictly according to the Code. No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest.”

21. The Apex Court in the case of ***Satender Kumar Antil*** (Supra), has issued certain directions to investigating agencies and the courts; has discussed arrest in cognizable offences, the mandate of Section 41, effect of its non-compliance while considering the bail application; has issued directions to ensure that police officers do not arrest the accused unnecessarily and magistrates do not authorize detention casually and mechanically; has held that Sections 41 and 41-A are facets of Article 21 of the Constitution; and has issued certain guidelines for avoiding unwarranted arrest, amongst other directions/observations.

22. The relevant paras of ***Satender Kumar Antil*** (Supra), with which we are concerned, are reproduced hereinunder :-

“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 enure 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 41A 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 41B deals with the procedure of arrest along with mandatory duty on the part of the officer.

*27. On the scope and objective of Section 41 and 41A, it is obvious that they are facets of Article 21 of the Constitution. We need not elaborate any further, in light of the judgment of this Court in **Arnesh Kumar v. State of Bihar**, (2014) 8 SCC 273:*

“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. These are the conclusions, which one may reach based on facts.

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. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57 CrPC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey:

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.

9. ...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.

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. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

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.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.”

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 41A of the Code. This Court has clearly interpreted Section 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.

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32. We also expect the courts to come down heavily on

the officers effecting arrest without due compliance of Section 41 and Section 41A. 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 60A of the Code which warrants the officer concerned to make the arrest strictly in accordance with 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 41A 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 Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail.”
(emphasis supplied)

23. In *Arnab Manoranjan Goswami v. State of Maharashtra*⁴, the Apex Court in para 67 has held as under :-

⁴ (2021) 2 SCC 427

“67. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognizes the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of the CrPC — or prevent abuse of the process of any Court or otherwise to secure the ends of justice. Decisions of this court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one – and a significant - end of the spectrum. The other end of the spectrum is equally important: the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure of 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognized the inherent power in Section 561A. Post Independence, the recognition by Parliament³⁷ of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower Courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before

it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum – the district judiciary, the High Courts and the Supreme Court – to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum – the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.”

24. In **Santosh v. State of Maharashtra**⁵, the Apex Court in para 6 has observed as under:-

“6. It appears, the IO was of the view that the custody of the Appellant is required for recording his confessional statement in terms of what the co-accused had already stated in the Statement Under Section 161 of the Code of Criminal Procedure, 1973. The IO was of the opinion that the Appellant was not cooperating because he kept reiterating

5 (2017) SCC 714, (2021) 2 SCC 427

that he had not purchased the food-grains. The purpose of custodial interrogation is not just for the purpose of confession. The right against self-incrimination is provided for in Article 20(3) of the Constitution. It is a well settled position in view of the Constitution Bench decision in Selvi and Ors. v. State of Karnataka-(2010) 7 SCC 263, that Article 20(3) enjoys an "exalted status". This provision is an essential safeguard in criminal procedure and is also meant to be a vital safeguard against torture and other coercive methods used by investigating authorities. Therefore, merely because the Appellant did not confess, it cannot be said that the Appellant was not cooperating with the investigation. However, in case, there is no cooperation on the part of the Appellant for the completion of the investigation, it will certainly be open to the Respondent to seek for cancellation of bail."

25. In **Joginder Kumar v. State of UP**⁶, it is observed in Para 20 by the Apex Court as under :

"20. In India, Third Report of the National Police Commission at page 32 also suggested:

"An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder; dacoity, robbery, rape, etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.

(ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

6 (1994) 4 SCC 260

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines....”

The above guidelines are merely incidents of personal liberty guaranteed under the Constitution of India. 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. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a Police Officer issues notice to person to attend the Station House and not to leave Station without permission would do”.

(emphasis supplied)

26. In *Mohd. Zubair v. State (NCT of Delhi)*⁷, 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 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*,⁹ 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*

⁷ (2022) SCC OnLine SC 897

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)

27. The conditions, which necessitate arrest are stipulated in Section 41(1)(b)(ii) clauses (a) to (e) of the Cr.P.C. as stated hereinabove. A Police Officer is not only expected to record reasons for arrest in writing but even in cases where he chooses not to arrest, he has to assign reasons. It is equally incumbent upon the Courts to satisfy themselves that there is compliance of Section 41 and 41A of the Cr.P.C., failing which the same will enure to the benefit of the person suspected of the offence, entitling him to be released on bail. As a matter of fact, in each and every case, arrest is not mandatory. Whenever arrest of a person is not required under the provisions of Sub-section (1) of Section 41 of the Cr.P.C., the Police Officer is required to issue a notice directing a 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 to appear before him or at such place as may be specified in the notice for answering certain queries.

28. In view of the legal position, it is necessary to consider whether the petitioner's arrest and authorizing his detention with the respondent No.1 is in consonance with the aforesaid legal position, meaning thereby, whether his arrest, and authorizing detention with the respondent No.1 is in violation of the provisions of Section 41 and 41A of the Cr.P.C.?

29. On 15th December 2022, respondent no.1 had issued first notice under Section 41A of the Cr.P.C. to the petitioner, calling upon him to appear in its office at New Delhi on 19th December 2022 for questioning *qua* the subject FIR. A photostat copy of the said notice is tendered on record. A bare look at the same would reveal that it was not served on the proper address of the petitioner, in the sense, it was not actually received by the petitioner but by a person namely, Rohit Das, who had put his endorsement in Hindi

beneath the said copy. The petitioner, thereupon, on his own, sent a whatsapp message to the Investigating Officer Mr. Nitesh Kumar, providing him with his correct e-mail ID, *inter alia*, requesting him to summon him (petitioner) on Wednesday i.e. 21st December 2022 instead of 19th December 2022, due to his pre-schedule medical appointments. The photostat copy of the e-mail is annexed at **Exh. 'E'** of the petition.

30. The petitioner attended the office of the respondent No.1 at New Delhi on 21st December 2022. However, it is contended that he was not allowed to enter into the office and was asked to attend on 22nd December 2022. On 22nd December 2022, the petitioner attended the respondent No.1's office and was present over there for the whole day. However, he was again called on 23rd December 2022. Since the petitioner had already been summoned by the E.D. on 23rd December 2022, he had informed the Investigating Officer of the respondent No.1 through a WhatsApp message and, therefore, could not attend the office of the respondent No.1. The copy of the summons by the E.D. is at **Exh. 'F'**.

31. The petitioner attended the office of the E.D. on 23rd

December 2022 in connection with an E.C.I.R. A copy of the gate-pass is at **Exh. 'E'**.

32. It transpires from the record that on 23rd December 2022 itself other co-accused named in the FIR i.e. Chanda Kochhar and Deepak Kochhar were arrested by the respondent No.1 and produced before the Special Judge, CBI on 24th December 2022 by the Investigating Officer – Nitesh Kumar, in connection with the FIR No.RC BD/2019E0001. The investigating Officer had sought custody of Kochhars' for 3 days on the ground that on 26th August 2009 the sanctioning committee headed by Mrs. Chanda Kochhar had sanctioned a loan of Rs.300 crores to Videocon International Electronics Ltd. in contravention of Rules and Policies of the bank and abused her official position as a public servant by dishonestly transferring Rs.64 crores on the very next day to the Videocon company and others.

33. On 24th December 2022, the respondent no.1 issued another notice under Section 41A of the Cr.P.C. calling upon the petitioner to appear before it in its office in Mumbai on 25th December 2022 for questioning *qua* the subject FIR. Interestingly, the respondent

No.1, instead of serving the notice personally upon the petitioner or by sending an e-mail which had already been furnished by the petitioner, pasted the same on the wall of the petitioner's former office building in Mumbai. Learned Counsel for the petitioner submits that the petitioner resides at Aurangabad. *Prima facie*, this seems to be nothing but a calculated move by the respondent No.1 to concoct non-attendance and non-cooperation by the petitioner. However, on 25th December 2022 itself, the petitioner realized the said fact and immediately addressed e-mails at 12:00 p.m. and 19:26 p.m. to respondent No.1 in response to the notice dated 24th December 2022 pasted on the walls of his former office building. The diligence and *bona-fide* of the petitioner can be demonstrated from the said e-mail, which is extracted below :-

"I have today morning learnt about your Notice dated 24.12.2022 u/sec 41A requiring my appearance today 25/12/22, Sunday.

Sir,

Due to pre decided schedule I am out of Mumbai for my treatment as I am unwell due to fever and high sugar level around 440-460 and presently stuck out of Mumbai and therefore it is difficult for me to attend your office today at 1.30 p.m.

You will appreciate that in previous week ie on 15/12/222

You had issued me notice u/sec 41-A for appearing on 19/12/22 and accordingly I had appeared and answered your all queries and thereafter was also present in CBI office for two days. My all statements are already recorded.

You will also appreciate that I have handed over all documents to your office and have always cooperated in the investigation by appearing at your offices in New Delhi at your requests many times in spite of my deteriorating health.

I shall continue to cooperate with the investigation.

However, considering urgency of matter I am cancelling scheduled treatment and returning back to Mumbai however I can be present at your office earliest by tomorrow noon ie 26/12/12.

Therefore, I kindly request you to defer scheduled date 25.12.2022 to 26/12/2022 around 12 pm."

34. From the language of the e-mail, it appears that the petitioner had already handed over all the documents and had co-operated with the Investigating Agency by appearing in its office at New Delhi on several occasions despite his deteriorating health. He further made it clear that he would be in a position to attend the office of the respondent No.1 on 26th December 2022. The copy of the e-mail is at **Exh. 'I'**.

35. One more notice under Section 41A of the Cr.P.C. came to be

issued by the respondent No.1 on 25th December 2022 to the petitioner calling upon him to appear before its Mumbai office on 26th December 2022 at 9:00 a.m. for questioning in the subject FIR. The notice did not mention that it was the last notice and that the respondent intends to arrest the petitioner for non-compliance. Subsequently, the petitioner, on his own volition appeared in the office of the respondent No.1 on 26th December 2022 where he was made to undergo RTPCR test and was put under arrest. It is submitted that no inquiry in relation to the investigation was conducted nor any questions were asked to the petitioner.

36. The respondent No.1 in its reply made a futile attempt to justify arrest of the petitioner by stating that the petitioner had appeared on 22nd December 2022 before the Investigating Officer, however, since other co-accused Mrs. Chanda Kochhar and Deepak Kochhar did not appear, the petitioner could not be confronted with them. There is no material placed on record to that effect indicating the said fact. It cannot be construed as a non-cooperation by the petitioner since he had duly appeared before the respondent No.1 on 22nd December 2022.

37. When another notice under Section 41A came to be issued by the respondent No.1 directing the petitioner to appear before it on 23rd December 2022, the respondent No.1's stand is that despite having acknowledged the receipt of the notice dated 22nd December 2022, the petitioner deliberately did not appear before the Investigating Officer on that date to avoid confrontation with the co-accused – Mrs. Chanda Kochhar and Deepak Kochhar. The falsity of this statement is apparent from the facts already stated hereinabove that on the same day, the petitioner had already been summoned by the E.D. and he had attended its office, in support of which, he has tendered the gate-pass of the E.D.'s office dated 23rd December 2022 which is at **Exh. 'F'**. Why the respondent No.1 did not tender any material to that effect or informed the remanding Court by placing the extract of case diary? The respondent No.1 in its reply stated about the third notice dated 24th December 2022 under Section 41A by stating that despite service of the said notice, the petitioner did not appear before the Investigating Officer on 25th December 2022. The respondent No.1 had not tendered any acknowledgment or proof of service of the said notice. The respondent No.1 had not even stated that the notice dated 24th

December 2022 was pasted on the outer wall of the petitioner's former office.

38. Mr. Thakare, contended that the petitioner came to be arrested for investigation and confronted with the co-accused – Mrs. Chanda Kochhar and Deepak Kochhar. He contends that since the petitioner did not appear on 19th December 2022 and 23rd December 2022, he could not be confronted with the co-accused. We are afraid, we cannot buy the arguments of Mr. Thakare that the petitioner intentionally did not appear before the Investigating Officer on the aforesaid dates to avoid the confrontation with the co-accused. This argument is to be accepted with a pinch of salt in light of the observation already made hereinabove.

39. The copy of the arrest memo of the petitioner is extracted below :-

Arrest Memo

1.	<i>Case No.</i>	<i>RCBD1/2019/E/0001 dated 22.01.2019 (Videocon Case)</i>
2.	<i>Section of Law</i>	<i>120-B r/w 420 IPC & Section 7 r/w section 13 (2) r/w 13 (1) (d) of the PC Act, 1988.</i>
3.	<i>Name of the SPE/</i>	<i>CBI, BSFB, New Delhi</i>

	<i>Branch</i>	
4.	<i>Date, time & Place of arrest</i>	<i>26.12.2022, 10.30 AM, O/o Head of Branch & DIG of Police, CBI, BSFB, Bandra Kurla Complex, Mumbai.</i>
5.	<i>Name, age, Parentage and address of the arrestee</i>	<i>Shri Venugopal Nandlal Dhoot, S/o Late Nandlal Dhoot, R/o 1st Floor, Videocon House, Malbar Hills, Mumbai-06.</i>
6.	<i>Name & Designation of officer effecting arrest</i>	<i>Nitesh Kumar, Dy. Supdt. of Police,. CBI, BSFB, New Delhi.</i>
7.	<i>Ground of Arrest</i>	<i>1. He is an FIR named accused person. 2. He has been inconsistent in his statement before IO/CBI and has kept in changing his version and as such has not cooperated with the investigation in disclosing full and true facts of the case.</i>
8.	<i>Name & Address of witnesses</i>	<i>Sh. Jeevan Hamal, Management Trainee, Punjab National Bank, Bhandup West Branch, Mumbai. PF Id:5206011, Mob:7668965343. Ms. Anitha Satish, Sr. Manager, Bank of Baroda, Ghatkopar East Branch, Mumbai. EC No.62517, Mob:9819134245.</i>
9.	<i>Whether the ground of arrest have been explained (in vernacular if possible) to</i>	<i>Yes.</i>

	<i>accused</i>	
10.	<i>Name and particulars of the persons notified about the arrest of the accused and their relations with accused</i>	<i>Ms. Pooja Dhoot, Daughter-in-law of Sh. Venugopal Dhoot on her mobile no.7021000019.</i>
11.	<i>Whether any visible signs of trauma/injury present on the body of the arrestee</i>	<i>Nil</i>
12.	<i>Any identification mark of accused (include peculiar physiognomic features also, if present)</i>	<i>A mole below right eye</i>
13.	<i>Whether personal search of the accused carried out.</i>	<i>Yes and No item has been found</i>
14.	<i>Any other remarks</i>	<i>Nil</i>

(Nitesh Kumar)
Dy.SP/CBI, BSFB, New Delhi

Received copy
(Signature/thumb impression of Arrestee)”

40. A bare look at the grounds of arrest would indicate that petitioner has been inconsistent in his statement before the Investigating Officer / CBI and has kept on changing his versions, as

such, has not co-operated with the investigation in disclosing full and true facts of this case. The ground of arrest is *sans* any particulars as to how his statements are inconsistent before the Investigating Officer and how he had not co-operated with the Investigating Agency in view of the fact that he had already attended the office but could not be interrogated by the Investigating Agency for want of the presence of the other co-accused for confrontation. The ground of arrest is quite casual and without any substance, which does not justify the mandate of Section 41(1)(b)(ii) from (a) to (e) of the Cr.P.C. It is not the case of the respondent No.1 that the petitioner was required to be arrested to prevent from committing any further offence or that he was causing the evidence of the offence to disappear or tampering with the evidence. It is not even the contention that he was making any inducement, threat or promise to any person acquainted with the facts of the case. The only contention of the respondent No.1 is that his arrest was required for proper investigation and for confrontation. The grounds of arrest are, therefore, not as per the mandate of said Section and in view of the directions issued by the Hon'ble Supreme Court in the judgments referred to hereinabove. There is nothing on record demonstrating

that the Officer had a “reason to believe” and “satisfaction for an arrest” .

41. In case of *Arnesh Kumar (supra)* and *Satender Kumar Antil (supra)*, the Hon’ble Supreme Court interpreted Section 41(1)(b)(i) and Section 41(1)(b)(ii) of the Cr.P.C. The elements of “reason to believe” and “satisfaction for an arrest” as mandated in Section 41(1)(b)(i)&(ii) of the Cr.P.C. have to be read together and as such, recorded by the concerned Officer while arresting an accused. The Officer cannot arrest the accused at his whims and fancies.

42. Even the remanding Courts, it appears, have not adhered to the ratio laid down by the Hon’ble Supreme Court in *Arnesh Kumar (supra)* and *Satender Kumar Antil (supra)* by ignoring compliance of Section 41 and 41A of the Cr.P.C. Merely by mentioning in the arrest memo that the petitioner has been inconsistent in his statements before the Investigating Officer and has kept on changing his versions and as such, has not co-operated with the investigation in disclosing full and true facts, is not sufficient and the same cannot be a ground of arrest as it is unacceptable and contrary to the mandate of Section 41(1)(b)(i)&(ii) from (a) to (e) of the Cr.P.C..

This is in light of the fact that a person cannot be compelled to give a self-incriminating statement in view of Article 20(3) of the Constitution.

43. In **Selvi Vs. State of Karnataka**⁸, the Hon'ble Supreme Court reiterated that Article 20(3) is an essential safeguard in criminal cases and is meant to be a vital safeguard against torture and other coercive methods used by the investigating agency. Hence, merely because an accused does not confess, it does not *ipso facto* mean that the accused is not co-operating with the investigation. Article 20(3) of the Constitution enjoys an "exalted status" and serves as an essential safeguard against torture and coercive measures used by the investigating Agency. The Courts have time and again reiterated the role of Courts in protecting personal liberty and ensuring that investigation is not used as a tool of harassment.

44. Now, again turning to the impugned orders dated 26th December 2022, 28th December 2022 and 29th December 2022 passed by the remanding Courts.

8 (2010) 7 SCC 2063

45. After his arrest when the petitioner was first produced before the Sessions Court at Mumbai, Court No.53, on 26th December 2022, the learned Judge after considering the submissions made by the Investigating Officer and the Counsel for the petitioner, recorded his satisfaction and observed thus :-

“I have heard both the sides and IO at the length of considerable time. I have also carefully gone through case diary. It is seen that the accused is arrested today in the alleged crime for want of non-cooperation on his part. The objection which is pointed out by the Ld. Advocate for the accused appears to be not proper regarding his illegal arrest. The IO submitted that instead of receiving multiple notices to join investigation, the accused all the time non-cooperated. The remand paper and the document attached with it and the conduct of the accused of non cooperation reflect that the IO nothing done wrong while arresting the accused in respect of the alleged offence. Consequently, it appears the compliance of mandate provision 41 and 41 (d) of Cr.P.C. on the part of IO. It is not disputed the fact that the present accused is arrested today itself and produced before the Court. Therefore, obviously, it is a first production of the accused with remand report, which certainly, required time for interrogation with the accused. The nature and gravity of offence appears to be very serious in respect of huge economic offence in respect of multiple crores. It is seen that investigation is at the initial stage, thus, this Court is of the considerable opinion that custodial interrogation of the present accused with the IO is certainly required. In view of the above facts and circumstances, whatever objections raised by the Ld. Advocate regarding illegal arrest of the accused deserves to be non consideration. The accused therefore, required to be remanded to CBI custody. Hence, order. ORDER

Accused Venugopal Nandlal Dhoot is remanded to CBI custody till 28.12.2022. Exh. 5 Application for seeking permission for home food, medicines and attendant doctor/helper to administer medicines and food and others for accused Shri. Dhoot filed by Adv. Ladda. ORDER Ld. SPP to say. Matter adjd for say and hearing on Exh.5 to 27.12.2022. Matter adjd for hearing on Ad-interim BA (Exh.3) to 28.12.2022. Authenticated copy of this roznama is to be given to both sides.”

46. Surprisingly, it can be seen from the order that the learned remanding Judge observed that whatever objections raised by the learned Advocate regarding illegal arrest of the accused deserves to be non-consideration. The observations of the learned Judge that there was a due compliance of the mandate of the provisions of Section 41 and 41A of the Cr.P.C. are casual and appears to be based upon *ipse dixit* of the Investigating Officer. It is apparent that the remanding Court had not recorded its satisfaction as to what persuaded him to authorize the detention of the petitioner after going through the case diary produced by the respondent no.1.

47. When the petitioner was again produced before the Special Judge, CBI on 28th December 2022, the learned Judge observed thus:-

“2. Police custody of accused for 02 days is sought by Investigating Officer on the grounds that on 26/08/2009 the Sanctioning committee headed by Mrs. Chanda Kochhar sanctioned the term loan of Rs.300 crore to Videocon International Electronics Limited in contravention of rules and policies of the bank and abuse her official position as a public servant dishonestly on the very next day the Videocon company transferred Rs.64 crore to M/s. NRL managed by Deepak Kochhar who is the husband of Chanda Kochhar. Therefore, she committed criminal breach of trust punishable u/s. 409 of IPC by sanctioning RTL of Rs.300 Crore and later of converted the funds of Rs.64 Crore for her own use by the investment in the company of the accused no.5. Prosecution prayed for grant of CBI custody of the accused for two days as accused Venugopal Dhoot who is arrested on 26.12.2022 is required to be confronted with the Co-accused Chanda Kochhar and Deepak Kochhar. According to prosecution the custodial interrogation of the accused is necessary for the same, Considering the seriousness and gravity of the offence.”

48. It appears that extension of custody was sought for the purpose of confrontation of the petitioner with the co-accused – Chanda Kochhar and Deepak Kochhar. There is no satisfactory answer from the Investigating Agency as to why for a period of 3 years, the Investigating Agency has neither confronted all the accused before one another or demonstrated the progress of the investigation by placing the case diary before the remanding Court. Non-compliance of Section 41 and 41A of the Cr.P.C. is, therefore, apparent.

49. The learned Judge in an order dated 28th December 2022 has simply observed that he has perused the case diary and found that the offence is of serious nature. He went on to observe that the earlier orders passed by his predecessors indicate that the Investigating Officer had complied with the requirements before effecting the arrest of the petitioner. This is something which cannot be countenanced in light of the mandate of law. Merely stating in the order that there is due compliance of Section 41 to 41A of the Cr.P.C. is not sufficient in view of the guidelines of ***Arnesh Kumar (supra)*** and ***Satender Kuamar Antil (supra)***. It is not an empty formality. It is manifest from the impugned orders passed by the remanding Courts that no serious efforts have been made to scrutinize the application seeking detention of the petitioner as well as the case diary tendered before the Court, particularly, in view of the settled guidelines by the Hon'ble Supreme Court. The onus of recording satisfaction, as already stated, not only lies on the Investigating Officer but even on the remanding Judge.

50. For the reasons stated hereinabove, the petitioner needs to be enlarged on bail, pending the hearing and final disposal of the

petition.

51. We, therefore, pass the following order :-

ORDER

- (i) The petitioner be released on furnishing cash security in the sum of Rs.1,00,000/-, for a period of two weeks;
- (ii) The petitioner shall execute a P.R. bond in the sum of Rs.1,00,000/-, with one or more sureties in the like amount, to the satisfaction of the Special Judge, CBI on or before completion of two weeks as above;
- (iii) The petitioner shall co-operate in the investigation conducted by the respondent No.1 and shall attend the Office of the respondent No.1, as and when summoned;
- (iv) The petitioner shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.
- (v) The petitioner shall not leave the Country without permission of the trial Court.

52. Writ Petition be listed on **6th February, 2023**.

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

54. At this stage, learned Counsel for the Intervenor appearing in Interim Application, seeks stay of the order granting interim bail to the petitioner. Request is rejected.

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]