



2026:AHC:14504-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 26221 of 2024

Sunil Kandu @ Sunil Kumar Gupta

.....Petitioner(s)

Versus

Secretary, Ministry Of Home Affairs And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	: In Person, Sunil Kandu
Counsel for Respondent(s)	: Anil Kumar Srivastava, C.S.C., Prem Narayan Rai

Court No. - 29

HON'BLE ARINDAM SINHA, J.

HON'BLE SATYA VEER SINGH, J.

(Per: Arindam Sinha, J.)

1. Petitioner appears in person. Prayers made by him in the petition are reproduced below.

"(I) Hon'ble Justices are requested to kindly pass an order in accordance with the Constitution under Section 18(A-1) of the Human Rights Act, 1993, in the interest of justice, to provide compensation to the family of the petitioner from opponents No. 1 and 2.

(II) Hon'ble Justices are requested to pass a just order for the judicial investigation of the above matter by the Law Officer of the Human Rights Commission, who has worked as a senior judges in the District Court and is currently working in the Human Rights Commission, on the complaint application dated 03.03.2023 submitted by the petitioner under Section 13(1) of the Human Rights Act, 1983, the investigation of which is pending before the Commission till date, and to submit the judicial investigation report to this court.

(III) Any other order by the Hon'ble Justices, as they may deem fit, keeping in view the circumstances of the above case, may be passed in the interest of justice in favour of the petitioner."

2. The writ petition came to be assigned to the Bench presided over by a learned Judge nominated by the Hon'ble The Chief Justice on administrative order dated 26th September, 2024. Office reported that said learned Judge, as per roster w.e.f. 7th October, 2025, was sitting at Lucknow Bench. Further report was, at present this Bench has the nomination. Hence, there

was subsequent administrative order dated 7th October, 2025 made by the Hon'ble The Chief Justice to list before the appropriate Court. The petition having had thus come before us, it was moved by petitioner in person on 8th October, 2025. He had submitted he seeks compensation for wrongful arrest and detention. He relied on section 18 (a) (i) in Protection of Human Rights Act, 1993 to submit, there be direction for payment of compensation. Upon the criminal case initiated against him having had been disposed of on 14th July, 2022, he had filed complaint dated 3rd March, 2023 before the Commission, to make enquiry. He submitted further, it is not necessary to seek result of the enquiry because on departmental enquiry made against concerned police personnel, there stood issued order of punishment dated 28th November, 2023. Guilt of the police personnel, who arrested him without prima-facie satisfying himself on credible evidence of the allegation of attempt to rape, was an act that infringed his human and fundamental right of liberty, violated by the police personnel, a public servant. He relied on **order dated 8th September, 2025** of the Supreme Court made in **Petition for Special Leave to Appeal (Crl.) no. 11244 of 2025 (Sohan Singh @ Bablu vs. State of Madhya Pradesh)**.

3. There was further hearing on 20th November, 2025. It will be convenient to reproduce paragraphs 1 and 2 of order made that day.

"1. The writ petition has been called on for further hearing. Petitioner appearing in person, on query, supplies information as noted below.

(i) He was arrested on 17th April, 2017.

(ii) Final report in the criminal case initiated against him is dated 4th May, 2017.

(iii) His bail application was moved and order made on 30th June, 2017.

(iv) He was released from custody on 4th July, 2017.

(v) The criminal case was disposed of on 14th July, 2022.

(vi) Petitioner lodged complaint with the Commissioner on 3rd March, 2023. The Commission issued order of inquiry on 10th March, 2023.

2. Petitioner relies on several judgments noted in a spiral booklet he has prepared. We appreciate his research and enterprise. For purpose of adjudication and notice to respondents that we require comments on following judgments, they are noted below. (i) Rudul Sah Vs. State of Bihar reported in (1983) 4 SCC 141;

(ii) Smt. Nilabati Behera alias Lalit Behera Vs. State of Orissa reported in (1993) 2 SCC 746;

(iii) S.R. Bommai Vs. Union of India reported in (1994) 3 SCC 1; and

(iv) Judgment dated 30th November, 2017 of Delhi High Court in Bablu Chauhan @ Dablu Vs. State Government of NCT of Delhi reported in 2018 (1) RCR (Criminal) 523."

4. Mr. Manish Goyal, learned senior advocate and Additional Advocate General was entrusted by State to defend. On 26th November, 2025 Mr. Goyal had relied on judgment of the Supreme Court in **Municipal Corporation of Delhi (MCD) vs. Association of Victims of Uphaar**

Tragedy reported in **(2011) 14 SCC 481**, paragraphs 45, 52, to 54, 80, 104 and 108. He had submitted on, inter-alia, tortious liability and constitutional tort. Today Mr. Goyal hands up short note of submissions.

5. We made several queries to Mr. Goyal to ascertain the facts and the procedure established by law for arrest. This is because contention of State is upon reliance of article 21 in the Constitution. The article is reproduced below.

*"21. Protection of life and personal liberty.- No person shall be deprived of his life or personal liberty **except according to procedure established by law.**"*

(emphasis supplied)

Our inquiry reveals, clause (ba) under sub-section (1) in section 41, Code of Criminal Procedure, 1973, since repealed but necessary as it was in operation at the material time, empowered any police officer to arrest without an order from a Magistrate and without a warrant. State has relied on the provision. The clause is reproduced below;

"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 -

.....

*(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;***

..... "

(emphasis supplied)

6. The complainant had lodged complaint with police station (P.S. Cantt., District Gorakhpur) on 30th March, 2017 at about 10:10 A.M. She said, inter-alia, on the day before, 29th March, 2017 at around 12:00 noon she along with her companion reached Gorakhpur station. Her companion went to get some food. She went to answer nature's call. When she returned, she could not locate the place, where her companion had asked her to sit. She started crying. At that time a person came and offered to help her reach home. It be mentioned, complainant said she is resident of Siddharth Nagar. We are told it is a place situate approximately 100 kms away from

Gorakhpur. Complainant went on to say, this unknown person disclosed his name and address. He offered to help her to get a bus for her to go home. He started taking her towards Charfatak and after finding her alone, molested and tried to rape her. When she shouted, passersby came and saved her from him. After sometime her companion arrived searching for her. The passersby told him about the incident. On basis of this complaint, first information report (FIR) was registered. Police commenced investigation. Complainant was produced for medical examination on 30th March, 2017 at 04:00 P.M. There is Police Medico Legal Report dated 30th March, 2017. English translation of the report is reproduced below.

"Police Medico legal

30-3-02017

10KA/1

Examine Reeta Age about 26 years/F W/o Ram Chandar Village Chanhdaya P.S. Uska Bazar Dist- Siddhart Nagar on dated 30-03-2017 at 4:00 pm at DHCKD B/B/Vimlesh Verma CP No. 1465 P.S. Cantt Gorakhpur

M/L A Black mole (RT) side of nose

*Injury (1) **contused swelly** 3.0 into to 2.0 cm. (LT) side of*

***Forehead** 2.5 cm above (LP) eyebrows*

*2. **Scabbed abrasion** size 0.50 into 0.50 cm. (Lf) side of nose brown in color.*

3. C/O over chest (4) C/O over abdomen

***Ing (1) caused by hard and blunt object**, about one to two days described simple=e in.....*

***Ing (2) caused by falling hard surface, simple.....** year.....about one to two daysIng (3) and (4) needs no opr.*

Stamp

C.M.O. Gorakhpur"

(emphasis supplied)

7. Complainant also recorded her statement before the police on 30th March, 2017. Mr. Goyal submits, pursuant thereto complainant got her statement recorded under section 164, before the Magistrate. She said in the statement under section 164, inter-alia, when she was crying a boy (obviously petitioner) came to her and asked her why she was upset. On query petitioner submits, he is presently 40 years old. Mr. Goyal submits, petitioner disclosed himself to be of 30 years age before the police. Above have been relied upon as credible information that petitioner had committed a cognizable offence covered by clause (ba) under section 41(1).

8. There are subsequent facts, of the police having sought to file final report on 27th April, 2017. The report was not accepted by the Magistrate and further investigation directed. The case ultimately came to be dropped under section 203 as the complainant, in spite of repeated notices, did not appear to

be examined. This was on order dated 14th July, 2022. On earlier order dated 30th June, 2017 petitioner was enlarged on bail, upon conditions of submitting personal bond of Rs. 1 lac and 2 competent sureties of said amount to satisfaction of concerned Magistrate. Petitioner had suffered 79 days of having been in custody.

9. We notice, in the bail application petitioner had pointed out that a person with intent of molestation and rape would not go and identify himself to the victim for purposes of befriending her. This identification complainant got recorded in the FIR. The police picked up petitioner on 17th April, 2017, from his FIR recorded address at Lucknow and produced him to obtain direction for remand. Then subsequent investigation revealed, petitioner was not present in Gorakhpur on 29th March, 2017.

10. We are clear in our mind complainant was not carrying a mobile phone. According to her, she could not locate the spot where her companion had left her. She walked with petitioner to a place near Charfatak. On referring to Google maps we find Charfatak is shown as 2.1 km away from Gorakhpur station. We are convinced there was no commotion, when, according to the complainant, she accompanied petitioner out of the station. We're at a loss to understand how her companion then located her in the place near to Charfatak at about 4:00 P.M. The FIR registered does not mention any person, who was part of the gathering on the complainant screaming distress, as had accompanied her to lodge the complaint. There is a simple explanation because the complaint was not lodged immediately. It was lodged the next day.

11. Our perusal of the FIR, statements under section 161 and 164 reveal complainant's allegation was that petitioner had grabbed her by the neck and bit her on the cheek. There is no mention of any hint of injury in aforesaid Police Medico Legal Report dated 30th March, 2017 to corroborate her such allegation. The police does not appear to have sought to verify from the complainant, the place of occurrence. There is nothing to show they did nor was the case diary produced by State to demonstrate otherwise. Where the FIR mentions gathering of passersby, reiterated by complainant in her statements before the police and the Magistrate, the police proceeded to arrest without locating or even trying to locate a single witness, of an incident of molestation and rape committed in broad day light at a place between Gorakhpur Station and near to Charfatak. However, armed with petitioner's address they proceeded to Lucknow to arrest him on 17th April, 2017, more than two weeks after registration of the FIR. We're not surprised there was internal inquiry against the police personnel, relied upon by petitioner. A paragraph from the preliminary investigation report dated 3rd October, 2023 (English translation), of the Superintendent of Police is

reproduced below.

"Therefore, the first investigation officer of the case, S.I. Promod Kumar Singh, currently posted at Police Station Vibhutikhand, Commissionerate, Lucknow, is found guilty of negligence in collecting strong/confirmatory and electronic/circumstantial evidences in the case."

Above is clear indictment regarding the arrest. Subsequently it was established that petitioner was not present at the scene of alleged occurrence.

12. Contention of State in opposing the writ petition is also that the Human Rights Commission could not have entertained the complaint as it was lodged beyond time prescribed in section 36 of Protection of Human Rights Act, 1993. The section is reproduced below.

"36. Matters not subject to jurisdiction of the Commission.- (1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

*(2) The Commission or **the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.**"*

(emphasis supplied)

Petitioner appearing in person has sought for any other relief and we as the writ Court are competent to mould the relief.

13. Mr. Parth Goswami, learned advocate holding the brief appears on behalf of respondent no. 3 (the Commission). He reiterates his submissions and reliance on authorities as recorded in paragraph 4 of aforesaid order dated 20th November, 2025, text of which is reproduced below.

"4. Mr. Parth Goswami, learned advocate appearing on behalf of respondent no.3 (the Commission) submits, the Supreme Court in Paramjit Kaur Vs. State of Punjab reported in (1999) 2 SCC 131 had said that the Commission may inquire on direction made by the Constitutional Courts. He submits further, Rudul Sah (supra) stands distinguished in Union of India through I.O. Narcotics Control Bureau Vs. Man Singh Verma reported in 2025 SCC OnLine SC 456."

14. On behalf of State there was reliance on **Municipal Corporation of Delhi (MCD) vs. Association of Victims of Uphaar Tragedy** (supra). Paragraphs 45, 52, to 54, 80, 104 and 108 were relied upon. The presiding

learned Judge of the Bench spoke for it but the other learned Judge also added his thoughts as stated in paragraphs 78 onward of the judgment. Contention of petitioner is of having undergone wrongful arrest without credible information had and satisfaction obtained. We think fit to reproduce below paragraph 45 in the judgment, which is extract from an earlier judgment of said Court. The fact of petitioner having been arrested by the police does not point towards inaction or negligence as discussed in other relied upon paragraphs 52 to 54, 80, 104 and 108.

*"45. In **Rabindra Nath Ghosal vs. University of Calcutta** reported in (2002) 7 SCC 478 the Supreme Court held:*

*The Courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in a public law proceedings. Consequently when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. But **it would not be correct to assume that every minor infraction of public duty by every public officer would commend the Court to grant compensation in a petition under Articles 226 and 32 by applying the principle of public law proceeding. The Court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties unless there is malice or conscious abuse.** Before exemplary damages can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act."*

(emphasis supplied)

15. On ascertaining the facts we are satisfied that the police did not have credible information and thereby could not have reason to believe on the basis of it that petitioner had committed the alleged offence. We reiterate, molestation and rape attempt was alleged to be on 29th March, 2017. We have already noted, complaint made and FIR registered was on 30th March, 2017. Medical examination and report were also of that date. The police arrested petitioner on 17th April, 2017 from his FIR recorded address at Lucknow. There is nothing on record nor anything produced before us to show some investigation made pursuant to the information received, for

having reason to believe petitioner had committed said offence. In the circumstances, fundamental right of petitioner under article 21 had been infringed by arbitrary and capricious action on part of the arresting police personnel, a public functionary and petitioner was a helpless victim of that act.

16. In context of last two preceding paragraphs we see that the Supreme Court in **Joginder Kumar vs. State of U.P.** reported in (1994) 4 SCC 260 (Bench strength of three learned Judges), paragraph 20 thereof referred to third report of the National Police Commission, for its suggestions. Extracted and reproduced below are the suggestions appearing in the paragraph.

"20. In India, Third Report of the National Police Commission at p. 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 terrorstricken 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.

(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....."

(emphasis supplied)

Suggestion clause (i) does not cover petitioner because there could be no necessity to arrest petitioner more than a fortnight after the alleged offence, to bring his movements under restraint to infuse confidence in the terror stricken victim. As aforesaid, the complainant is resident of Siddharth Nagar and petitioner was picked up from far away Lucknow. Other clauses (ii), (iii) and (iv) are not even remotely applicable to petitioner.

17. In **Satendra Kumar Antil vs. Central Bureau of Investigation** reported in (2022) 10 SCC 51, the Supreme Court also declared on section 41 by paragraph 23 therein, reproduced below.

"23. Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a

person has committed a cognizable offense, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured."

On this aspect an earlier judgment of said Court in **Arnesh Kumar vs. State of Bihar** reported in (2014) 8 SCC 273 was relied upon.

18. With reference to the suggestions in Third Report of the National Police Commission the Supreme Court in **Joginder Kumar vs. State of U.P.** (supra) said, the guidelines are merely the 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. An 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 (2011) 14 SCC 481. It would be prudent for a police officer, in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief, both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. 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.

19. Petitioner is before us seeking compensation for wrongful arrest. We are convinced his arrest was not on procedure established by law. It may well be that petitioner was out of time in taking his complaint to the Commission on

his allegation of violation also of his human right of liberty. We note that the criminal case against him was disposed of on 14th July, 2022 and less than a year therefrom, he approached the Commission. From the cases cited and our research we see that the Supreme Court has said that the constitutional Courts can grant compensation. We choose to rely on **Rudul Sah vs. State of Bihar** reported in **(1983) 4 SCC 141** (Bench strength of three learned Judges), paragraphs 1 and 11. The paragraphs are reproduced below.

"CHANDRACHUD, C.J.- This Writ Petition discloses a sordid and disturbing state of affairs. Though the petitioner was acquitted by the Court of Session, Muzaffarpur, Bihar, on June 3, 1968 he was released from the jail on October 16, 1982, that is to say, more than 14 years after he was acquitted. By this habeas corpus petition, the petitioner asks for his release on the ground that his detention in the jail is unlawful. He has also asked for certain ancillary reliefs like rehabilitation, reimbursement of expenses which he may incur for medical treatment and compensation for the illegal incarceration.

.....

11. Taking into consideration the great harm done to the petitioner by the Government of Bihar, we are of the opinion that, as an interim measure, the State must pay to the petitioner a further sum of Rs. 30,000 (Rupees thirty- thousand) in addition to the sum of Rs. 5,000 (Rupees five thousand) already paid by it. The amount shall be paid within two weeks from today. The Government of Bihar agrees to make the payment though, we must clarify, our order is not based on their consent.

....."

As such we are minded and do award compensation of Rs. 1,00,000/-. The amount be paid to petitioner by respondent no. 2 within four weeks from communication of certified copy of this judgment made to the office by him.

20. The writ petition is accordingly allowed and disposed of.

January 20, 2026

sailesh

(Arindam Sinha,J.)

(Satya Veer Singh,J.)