

Court No. - 46

Case :- CRIMINAL MISC. WRIT PETITION No. - 4252 of 2022

Petitioner :- Ramesh Chand Gupta @ Chandu

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Ved Prakash Pandey

Counsel for Respondent :- G.A.

Hon'ble Siddharth,J.

Hon'ble Surendra Singh-I,J.

Heard learned counsel for the petitioner and learned AGA for State respondent.

This writ petition has been filed praying for directing the respondents to pay compensation to the petitioner for his arbitrary and illegal detention in connection with case no. 6 of 2022(State Vs. Ramesh Chand Gupta @ Chandu), under sections 151/107/116 Cr.P.C., Police Station, Mahiyahu, District- Jaunpur from 10.01.2022 to 13.01.2022.

The brief facts of the case are that in FIR dated 22.11.2021 was registered as Case Crime No. 0298 of 2021 I.P.C., under sections-147, 427, 504, 452, 323, 354 and 506 IPC, Police Station- Mariyahun, District- Jaunpur.

The aforesaid FIR was challenged before this Court in Criminal Misc. Writ Petition No. 1234 of 2021 by which was disposed of by the following order:-

"The instant petition has been filed by the petitioners with the following prayers :-

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned First Information Report dated 1.11.2021 registered as Case Crime No. 337 of 2021, under Sections 452, 323, 504, 506, 34 IPC, Police Station- Rura, District- Kanpur Dehat.

"(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents not to arrest or harass the petitioners in pursuance of impugned First Information Report."

The submission is that all alleged offence is punishable with imprisonment of seven years, therefore the police authorities are bound to follow the procedure laid down under Section 41-A Cr.P.C. The petitioners have been wrongly implicated and could not be arrested. Learned counsel for the petitioners has placed reliance on the judgement of this Court dated 28.01.2021 in Criminal Misc. Writ Petition No.17732 of 2020 (Vimal Kumar and 3 others vs. State of UP and 3 others) in which guidelines have been framed following the judgement of the Apex Court in different cases, relating to offences providing punishment of seven years or less.

We have gone through the impugned first information report and we are of the opinion that the guidelines framed by this Court in the above noted judgement are equally applicable to the facts of the instant case.

As it has also been pressed before the Court that the petitioners no. 2 and 3 are minor, it would always be open for the petitioners to get the relief of juvenile by the competent authority in accordance with law.

Accordingly, the instant petition also stands disposed of in terms of Vimal Kumar(supra)."

After the order was uploaded on the website of this Court, it was found that case crime no. and sections of this case were wrongly transcribed in the order of the this Court dated 20.12.2021. Hence, the order was got corrected by the order dated 18.02.2022 as follows:-

"(Order on Criminal Misc. Correction Application No. 2 of 2022)

The correction application is allowed.

The words "(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned First Information Report dated 1.11.2021 registered as Case Crime No. 337 of 2021, under Sections 452, 323, 504, 506, 34 IPC, Police Station- Rura, District- Kanpur Dehat " occurring in paragraph-3 of the order dated 20.12.2021 shall be read as "(i) Issue a writ, order or direction in the nature of certiorari quashing the First Information Report dated 22.11.2021 registered as Case Crime No. 0298 under Section 147, 427, 504, 452, 323, 354, 506 IPC, Police Station Mariyahun, District Jaunpur".

This order shall be treated as part of the order dated 20.12.2021 and the earlier order passed by the Court has been corrected. A certified copy of this order shall be issued along with copy of order dated 20.12.2021."

When the in-charge of the police station came to know that the petitioner has got an order in his favour from the High Court, he *challaned* him on 09.01.2022, under section 151, 107 and 116 Cr.P.C., and kept him in his custody for whole night on 09.01.2022.

On 10.01.2022, bail application was moved on behalf of petitioner, but he was sent to jail. On 11.01.2022 another bail application was moved on behalf of the petitioner before the respondent no.3, but it was heard only on 13.01.2022 and the petitioner was released.

Learned counsel for the petitioner has relied upon the judgment of this Court in the case of Shiv Kumar Verma and Another Vs. State of U.P. and other, 2021 0 Supreme(ALL) 310 and has submitted that the State Government has taken a policy decision dated 23.03.2021 for payment of compensation of Rs. 25,000/- for illegal detention of any citizen by any officer of the State Government and also for initiation of disciplinary proceedings against such officer.

He has submitted that this Court in the above case held that the where discretion vested in public authorities is exercised arbitrarily against any person and he is illegally detained on account of fault of the public authorities, he is liable to be compensated.

Learned AGA has filed counter-affidavit stating that in case crime no. 298/2021, chargesheet has been submitted by the investigating officer against the petitioner. It has further been submitted that during investigation of case crime no. 0298/2021 registered against the petitioner looking into the possibility of disturbance of peace and tranquility proceedings under sections 151/ 107/116 Cr.P.C., was initiated against petitioner and hence the allegations made are not admitted.

Learned AGA on the basis of counter-affidavit submitted that arrest of petitioner was justified in the interest of maintenance of peace, tranquility and also law and order and hence he is not entitled to any compensation.

After hearing the rival contentions, this Court finds that clear allegations have been made against respondent no.3 in the writ

petition from paragraphs 11 to 14:-

"11. That since the Incharge of Police Station Mariyahun arrested the petitioner and when knew that he has obtained order from the Hon'ble High Court dated 20.12.2021, then in hurried manner prepared a chalani report dated 9.1.2022 under sections 151/107/116 Cr.P.C. and was kept in custody whole night and next day, on 10.1.2022, the petitioner was brought before respondent No.3. True copy of the chalani report dated 9.1.2022 is being annexed herewith and marked as Annexure No. 3 to this writ petition.

12. That on 10.1.2022 bail application was moved before the respondent No.3, but knowingly and illegally the bail application of the petitioner was not accepted and further date was fixed on 22.1.2022 and the petitioner was sent to jail under judicial custody which reveals from the Order dated 10.1.2022.

13. That again on 11.1.2022 the petitioner moved another bail application which was received in the office of respondent No.3. Photocopy of the bail application dated 11.1.2022 is being annexed herewith and marked as Annexure No. 4 to this writ petition.

14. That despite the bail application dated 11.1.2022 moved on behalf of the petitioner before respondent No.3, the same was heard by respondent No.3 on 13.1.2022 from which it is apparently clear that since 9.1.2022 upto 13.1.2022, the petitioner was illegal and arbitrarily detained in police custody as well as in judicial custody for which Article 21 of Constitution of India has been infringed in connection with illegal detention of the petitioner. Photocopy of the Order dated 13.1.2022 passed by respondent No.3 releasing the petitioner on bail is being annexed herewith and marked as Annexure No. 5 to this writ petition. "

In the counter-affidavit these paragraphs have not been denied and have been stated to be matters on record and they can be verified from perusal of the record.

Therefore, averments made in the writ petition are unconverted regarding the illegal detention of the petitioner in custody from 11.01.2022 to 13.01.2022 because of arbitrary and casual exercise of power by the respondent no.3, Sub-divisional Magistrate, P.S.-Mahiyahun, District- Jaunpur.

This Court in the case of Shiv Kumar Verma and another(supra) has held that where the illegal detention of the petitioner was from

12.10.2020 to 21.10.2020. In case under section 151/107/116 Cr.P.C., compensation is payable to petitioner by holding as follows:-

"10. In the counter affidavit dated 01.02.2021, the respondent no.3 has stated in paragraph 5 and 8 that "the petitioners submitted the applications through their counsel that they are ready to furnish personal bonds as well as bail bonds, therefore, they may be released on bail and the answering respondent directed the concerned Tehsildar to verify the revenue records produced by the sureties and on verification the petitioners shall be released on 21.10.2020 on bail."

11. In his counter affidavit, the respondent no.3 has tried to justify his arbitrary action and clear breach of statutory duty cast upon him as well as the fundamental rights guaranteed under [Article 14](#) and [21](#) of the Constitution of India. In this regard, it would be appropriate to refer to the provisions of [Sections 107](#), [111](#) and [116](#) of the Code of the Criminal Procedure, 1973, which are reproduced below:

"107. Security for keeping the peace in other cases.

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

"111. Order to be made. When a Magistrate acting under [section 107](#), [section 108](#), [section 109](#) or [section 110](#), deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required."

"116. Inquiry as to truth of information.

(1) When an order under section III has been read or explained under [section 112](#) to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under [section 113](#), the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons-cases.

(3) After the commencement, and before the completion, of the inquiry under subsection (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under [section 111](#) has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded: Provided that-

(a) no person against whom proceedings are not being taken under [section 108](#), [section 109](#), or [section 110](#) shall be directed to execute a bond for maintaining good behaviour;

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under [section 111](#).

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs: Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.

(7) Where any direction is made under sub- section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse."

12. [Section 107](#) Cr.P.C. requires the Magistrate receiving the information that any person is likely to commit a breach of peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit. Perusal of the order dated 08.10.2020, passed by the respondent no.3 would reveal that there is no such satisfaction recorded by the respondent no.3. The aforesaid order dated 08.10.2020 would further reveal that the respondent no.3 has not required the petitioners to show cause that why they should not be ordered to execute a bond with or without sureties. Thus, the respondent no.3 has committed clear breach of mandate of Section 107 Cr.P.C.

13. [Section 111](#) Cr.P.C. provides that when a Magistrate acting under [section 107](#), [section 108](#), [section 109](#) or [section 110](#), deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth (i) the substance of the information received, (ii) the amount of the bond to be executed, (iii) the term for which it is to be in force, and (iv) the number, character and class of sureties (if any) required. These necessary ingredients of [Section 111](#) Cr.P.C. are totally absent in the order dated 08.10.2020 passed by the respondent no.3. Thus, it is evident on record that the respondent no.3 has acted arbitrarily and illegally.

14. It would further be relevant to note that admittedly the petitioners have submitted personal bond on 12.10.2020 although the order passed by the respondent no.3 dated 08.10.2020 does not specify the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties, if any, required. Despite submission of personal bond and other papers on 12.10.2020 by the petitioners before the respondent no.3, they were not released by the respondent no.3 and that too against his own order dated 08.10.2020 that the petitioners shall be detained till presentation of personal bond/bail bond. Non release of the petitioners by the respondent no.3 even after submission of

personal bond/bail bond and other papers, is a clear breach of [Article 21](#) of the Constitution of India, by the respondent no.3 which resulted in illegal detention of the petitioners at least since 12.10.2020 to 21.10.2020.

15. On 02.02.2021 this Court noted the statement made by the State Government in Paragraph 15 of the order dated 02.02.2021 as under:

"15. Learned Additional Advocate General and the Secretary, Home, U.P. Lucknow jointly state that the State Government shall develop a mechanism and shall also issue appropriate guidelines so as to ensure that such instances may not repeat again. They further state that the State Government shall consider to grant monetary compensation to the petitioners for breach of their fundamental rights under [Article 21](#) of the Constitution of India."

16. In pursuance to the statement made on own behalf of the State government as noted in the aforequoted paragraph 15 of the order dated 02.02.2021, the State Government filed an affidavit of compliance dated 24.03.2021 of Sri Tarun Gauba, Secretary, Home Affairs, Uttar Pradesh, in which in paragraph 10 it has been stated as under :

"That it is most respectfully submitted that the State Government has issued directions to all District Magistrates and all Executive and Special Magistrates who are sub ordinate to the District Magistrates, to exercise their power under [Section 107, 116](#) Cr.P.C. for maintenance of public peace and public tranquility in their territorial jurisdiction. They have been further advised that each and every case under the aforesaid proceedings shall be decided on its own merit with the application of judicial mind and in accordance with the established law & procedure to ensure that the fundamental rights of citizens are protected. The State Government has directed all the District Magistrates of the State to ensure strict compliance of the policy/guideline dated 23rd March, 2021. The State Government has reformulated the earlier policy dated 02.03.2021 and after including the aforementioned issues it has re-issued policy/guideline dated 23rd March, 2021. For kind perusal of this Hon'ble Court copy of policy/guideline dated 23rd March, 2021 is being filed herewith and marked as Annexure-1 to this affidavit."

17. The policy of the State Government dated 23.03.2021 appended as Annexure 1 to the aforesaid affidavit of compliance dated 24.03.2021, is reproduced below :-

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18. In the case of [Lucknow Development Authority Vs. M.K. Gupta](#) (1994) 1 SCC 243 (Paras 8, 10, 11 and 12 Hon'ble Supreme Court

observed that under our Constitution Sovereignty vest in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law.

19. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. The servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore, the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil.

20. In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated which erodes the credibility in the system. Where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law.

21. Once it is found by the competent authority that a complainant is entitled for compensation for inaction of those who are entrusted under the Act to discharge their duties in accordance with law, then payment of the amount may be made to the complainant from the public fund immediately but it may be recovered from those who are found responsible for such unparadonable behaviour. This legal position is reflected from the law laid down by the Apex Court in Lucknow Development Authority's case (supra). In the said case it was further observed by the Apex Court that the Administrative law of accountability of public authorities or their arbitrary and even ultra vires actions has taken many strides and it is now accepted both by this Court and English Courts that State is liable to compensate for loss or injury suffered by a citizen due to arbitrary action of its employees.

22. The legal principles as enumerated in foregoing paragraphs Nos. 18, 19, 20 & 21 also finds support of the law laid down by Hon'ble Courts in the case of Lucknow Development Authority (supra); Jay Laxmi Salt Works (P) Ltd. Vs. State of Gujarat (1994) 4 SCC 1; N. Nagendra Rao & Co. Vs. State of A.P. (1994) 6 SCC 205; State of Maharashtra and others Vs. Kanchanmala Vijaysing Shirke and others (1995) 5 SCC 659; Chief Conservator of Forests and another (1996) 2 SCC 293; S.P. Goel vs Collector Of Stamps, Delhi (1996) 1 SCC 573; Common Cause A. Registered Society Vs. Union of India JT 1999 (5) SC 237: AIR 1999 SC 2979; Shiv Sagar Tiwari Vs. Union of India and others (1996) 6 SCC 558; Chairman, Railway Board and others Vs. Chandrima Das (Mrs.) and others (2000) 2 SCC 465; State of A.P. Vs. Challa Ramkrishna Reddy and others (2000) 5 SCC 712; Research Foundation for Science (10) Vs. Union of India (2005) 13 SCC 659; M.C. Mehta Vs. Union of India and Others (2006) 3 SCC 399; Union of India Vs. Prabhakaran Vijaya Kumar and others (2008) 9 SCC 527; Action Committee, Unaided Private Schools and others Vs. Director of Education, Delhi and others (2009) 10 SCC; Delhi Jal Board Vs. National Campaign for Dignity and Rights of Sewerage and Allied Workers and others (2011) 8 SCC 568; Municipal Corporation of Delhi, Delhi Vs. Uphaar Tragedy Victims Association and others (2011) 14 SCC 481.

Action by the State Government

23. We record our appreciation for the State Government to take the aforequoted policy decision dated 23.03.2021 for payment of compensation of Rs.25,000/- for illegal detention of any citizen by any Officer of the State Government and initiation of disciplinary

proceedings against such officer. Since the State Government itself has taken a policy decision and has paid compensation to the petitioners herein, therefore, no further direction for payment of compensation is required to be issued in the present writ petition.

24. In view of the aforesaid, this writ petition is disposed of with the following directions :-

(i) The State Government shall ensure that the provisions of the Cr.P.C. as referred in the policy decision dated 23.03.2021 are strictly followed/observed by all the concerned officers.

(ii) The State Government shall further ensure that paragraph 12 of the policy decision dated 23.03.2021 is strictly implemented, which at the cost of repetition is reproduced below:

(1) भारत के संविधान के अनुच्छेद 21 का उल्लंघन करते हुये किसी व्यक्ति की अवैध हिरासत किये जाने के लिए अनुशासनिक अधिकारी द्वारा जांच में दोषी पाये जाने पर उत्तरदायी अधिकारी के विरुद्ध उ०प्र० सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999, दि आल इंडिया सर्विसेज (डिसिप्लिन एंड अपील) रूल्स, 1969 एवं उ०प्र०अधीनस्थ श्रेणी के पुलिस अधिकारियों की (दण्ड और अपील) नियमावली, 1991 (यथा संशोधित) में संगत नियमों के आंतर्गत दण्डात्मक कार्यवाही की जायेगी।

(2) अनुशासनिक प्राधिकारी द्वारा अपनी जांच रिपोर्ट 03 माह में अथवा संगत नियमावली में यथा उल्लिखित समयानुसार अस्तुत की जायेगी।(3) यदि किसी नागरिक की अवैध रूप से हिरासत प्रमाणित पायी जाती है तो पीड़ित व्यक्ति को रुपये 25,000 / की धनराशि का भुगतान मुआवजे के रूप में किया जायेगा।

(iii) The State Government shall publish Para 12 of its Policy decision dated 23.03.2021 in all largely circulated National Level Newspaper having circulation in the State of Uttar Pradesh and shall also display it on display board at prominent places within public view, in all blocks, Tehsil Headquarters, Police Stations and in campus of District Collectorate in the whole of the State of Uttar Pradesh.

(iv) Copy of this order shall be sent by the State Government to all District level and Tehsil level Bar Associations in the whole of the State of Uttar Pradesh.

25. Let a copy of this order be sent by the Registrar General of this Court to the Chief Secretary of the State of Uttar Pradesh and the Additional Chief Secretary,

Home, for strict compliance."

From the perusal of order dated 10.01.2022 of the Sub-divisional Magistrate aforesaid, it is clear that on 10.01.2022 the petitioner was produced before court of S.D.M., and he has recorded the finding in his order dated 10.01.2022 that the petitioner has not made any application for being released on bail. There is no finding that any show cause notice was issued to the petitioner regarding accusations made against him.

On 11.01.2022 such an application was made and the petitioner was directed to be enlarged on two sureties of Rs. 50,000/- on 13.01.2022 each. It is clear that the petitioner made bail application on 11.01.2022 before the respondent no. 3 who did not pass any order on 11.01.2022, but on 13.01.2022 he passed the order releasing the petitioner on bail on furnishing two sureties of Rs. 50,000/- each. Therefore, the detention of the petitioner from 11th to 12th January, 2022 was not justified.

The certified copy of the bail application has been brought on record as Annexure- 4 to the writ petition with the order of respondent no.3 thereon dated 13.01.2022. This Court has clarified in the judgment of Shiv Kumar Verma and Another (supra) that [Section 107](#) Cr.P.C. requires the Magistrate receiving the information that any person is likely to commit a breach of peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit. Perusal of the order dated 08.10.2020, passed by the respondent no.3 would reveal that there is no such satisfaction recorded by the respondent no.3. The aforesaid order dated 08.10.2020 would further reveal that the respondent no.3 has not required the petitioners to show cause that why he should not be ordered to execute a bond with or without sureties. Thus, the respondent no.3 has committed clear breach of mandate of Section 107 Cr.P.C. [Section 111](#) Cr.P.C. provides that when a Magistrate acting under [section 107](#), [section 108](#), [section 109](#) or [section 110](#), deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth (i) the substance of the information received, (ii) the amount of the bond to be executed, (iii) the term for which it is to be in force, and (iv) the number, character and class of sureties (if any) required. These necessary ingredients of [Section](#)

111 Cr.P.C. are totally absent in the order dated 13.01.2022 passed by the respondent no.3. Thus, it is evident from record that the respondent no.3 has acted arbitrarily and illegally.

Under Section 151 Cr.P.C., the arrest of person can be made by the police officer on the apprehension that he may commits any cognizable offence and such officer cannot detained any person in custody for period exceeding 24 hours from time of his arrest. The police arrested the petitioner on 09.01.2022 and produced him on 10.01.2022 before the respondent no.3.

The order dated 10.01.2022 of the respondent no.3 shows that because of petitioner did not moved any bail application, he was not released from custody. Since implication of petitioner was also under section 107 Cr.P.C., therefore, he was required to be given show cause notice as to why he should not be ordered to execute a bond, with or without sureties for keeping peace for such period, not exceeding one year, as respondent no.3 may have deemed fit.

Respondent no.3 instead of directing him to show cause, sent him jail only on the ground that no bail application was moved by the petitioner. It is also clear from the documents on that no inquiry as required under section 116 Cr.P.C., was conducted by the Magistrate/Respondent no. 3.

Therefore, it is clear that the respondent no. 3 has acted against the petitioner against the express provisions of law. The petitioner is held entitled to compensation of Rs. 25,000/- for illegal detention from 10.01.2022 to 13.01.2022 by the respondent no.3 and litigation cost of Rs. 10,000/- in decision of the State Government dated 23.03.2021 and the judgment of this Court Shiv Kumar Verma (supra).

The writ petition is allowed.

The respondent no.1 is directed to get the payment of aforesaid amount of compensation and last paid to petitioner within six weeks and send a compliance report to Registrar(Compliance) of this Court.

In case of failure, petitioner may file appropriate application before this Court.

Petition is **allowed**.

Order Date :- 8.4.2024

Abhishek