

**OFFICE OF THE DIRECTOR GENERAL OF POLICE
PUDUCHERRY**

No. 07/SP(HQ)/OW/2020-211

Dated: 24.06.2020.

STANDING ORDER No. 02 OF 2020

**Sub: Directives on the abhorrence of 'custodial violence' –
Guidelines regarding arrest of a person – Reg.**

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In view of the recent incident of custodial death in the neighbouring State of Tamilnadu, allegedly owing to Police excess, It is imperative to reiterate the directives of the apex Court herein, for strict implementation and abhorrence of 'custodial violence':

The Hon'ble Supreme Court of India in the matter of **Joginder Kumar Vs. State of UP** (Crl. W.P. No. 9 of 1994) made the following observations :-

1. 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.
2. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. No arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafide of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest.
3. 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.

The following requirements are also prescribed in the Judgment:-

1. An arrested person being held in custody is entitled, if he so requests to have one friend or relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.
2. The Police Officer shall inform the arrested person when he is brought to the Police Station of this right.
3. An entry shall be required to be made in the Station General Diary as to who was informed of the arrest. These protections from power must be held to flow from Article 21 and 22 (1) and enforced strictly.

The Hon'ble Supreme Court of India in the case of **D.K. Basu Vs. State of West Bengal** issued the following requirements to be followed in all cases of arrest or detention :

1. The Police Personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designation of the arrestee must be recorded in a register and the case diary.
2. The Police Officer carrying out the arrest of the arrestee, shall prepare a memo of arrest at the time of arrest and such memo shall be attested by atleast one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
3. A person who has been arrested or detained and is being held in custody in a Police Station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being detained at the particular place unless the arresting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
4. The time, place of arrest and venue of custody of an arrestee must be notified by the Police where the next friend or relative of the arrestee lives outside of District or town through the Legal Aid Cell in the District and the Police Station of the area concerned telephonically within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
6. An entry must be made in the Station General Diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
7. The arrestee should where he so requests be also examined at the time of his arrest and major and minor injuries, if any present on his/her body must be recorded at the time. The Inspection Memo must be signed both by the arrestee and Police Officer affecting the arrest and its copy provided to the arrestee.

8. The arrestee should be subjected to medical examination by a trained doctor after every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services should prepare such a panel for the Districts.
9. Copies of all the documents including the memo of arrest, referred to above should be sent to the Court for record.
10. The arrestee may be permitted to meet his lawyer during interrogation though not throughout the interrogation.
11. A Police Control Room should be provided at all district and state headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the Police Control Room it should be displayed on a conspicuous notice board.

The Hon'ble Supreme Court of India also directed that failure to comply with the said requirement shall apart from rendering the concerned official, liable for departmental action; also render him liable to be punished for contempt of Court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter. These instructions are to be notified at every Police Station at a conspicuous place.

The following Guidelines regarding arrest were issued by the National Human Rights Commission:

(a) Pre-Arrest :

1. The power to arrest without a warrant should be exercised only after a reasonable satisfaction is reached, after some investigation, as to the genuineness and bonafides of a complaint and a reasonable belief as to both the person's complicity as well as the need to effect arrest. [Joginder Kumar's case (1994) 4 SCC 260]
2. Arrest cannot be justified merely on the existence of power, as a matter of law, to arrest without a warrant in a cognizable case.
3. After Joginder Kumar's pronouncement of the Supreme Court the question 54 whether the power of arrest has been exercised reasonably or not is clearly a justifiable one.

4. Arrest in cognizable cases 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 suspect to prevent him from escaping or evading the process of law.
 - (ii) The suspect is given to violent behaviour and is likely to commit further offences.
 - (iii) The suspect requires to be prevented from destroying evidence or interfering with witnesses or warning other suspects who have not yet been arrested.
 - (iv) The suspect is a habitual offender who, unless arrested, is likely to commit similar or further offences. [3rd Report of National Police Commission].
5. Except in heinous offences, as mentioned above, an arrest must be avoided if a Police Officer issues notice to the person to attend the Police Station and not leave the Station without permission. (see Joginder Kumar's case (1994) SCC 260).
6. The power to arrest must be avoided where the offences are bailable unless there is a strong apprehension of the suspect absconding.
7. Police Officers carrying out an arrest or interrogation should bear clear identification and name tags with designations. The particulars of Police Personnel carrying out the arrest or interrogation should be recorded contemporaneously, in a register kept at the Police Station.

(b) Arrest :

1. As a rule, use of force should be avoided while effecting arrest. However, in case of forcible resistance to arrest, minimum force to overcome such resistance may be used. However, care must be taken to ensure that injuries to the person being arrested, visible or otherwise, is avoided.
2. The dignity of the person being arrested should be protected. Public display or parading of the person arrested should not be permitted at any cost.

3. Searches of the person arrested must be done with due respect to the dignity of the person, without force or aggression and with care for the person's right to privacy. Searches of women should only be made by other women with strict regard to decency. (S.51(2) Cr.PC.)
4. The use of handcuffs or leg chains should be avoided and if at all, it should be resorted to strictly in accordance with the law repeatedly explained and mandated in Judgment of the Supreme Court in Prem Shanker Shukla v. Delhi Administration [(1980) 3 SCC 526] and Citizen for Democracy v. State of Assam [(1995) 3 SCC 743].
5. As far as is practicable, Women Police Officers should be associated where the person or persons being arrested are women. The arrest of women between sunset and sunrise should be avoided.
6. Where children or juveniles are sought to be arrested, no force or beatings should be administered under any circumstances. Police Officers, may for this purpose, associate respectable citizens so that the children or juveniles are not terrorized and minimal coercion is used.
7. Where the arrest is without a warrant, the person arrested has to be immediately informed of the grounds of arrest in a language which he or she understands. Again, for this purpose, the Police, if necessary may take the help of respectable citizens. These grounds must have already been recorded in writing in Police records. The person arrested should be shown the written reasons as well and also given a copy on demand. (S.50(1) Cr.PC.)
8. The arrested person can, on a request made by him or her, demand that a friend, relative or other person known to him be informed of the fact of his arrest and the place of his detention. The Police should record in a register the name of the person so informed. [Joginder Kumar's case (supra)].
9. If a person is arrested for a bailable offence, the Police Officer should inform him of his entitlement to be released on bail so that he may arrange for sureties. (S.50(2) Cr.PC.)
10. Apart from informing the person arrested of the above rights, the Police should also inform him of his right to consult and be defended by a lawyer of his choice. He should also be informed that he is entitled to free legal aid at state expense [D.K. Basu's case (1997) 1 SCC].

11. When the person arrested is brought to the Police Station, he should, if he makes a request in this regard, be given prompt medical assistance. He must be informed of this right. Where the Police Officer finds that the arrested person is in a condition where he is unable to make such request but is in need of medical help, he should promptly arrange for the same. This must also be recorded contemporaneously in a register. The female requesting for medical help should be examined only by a female registered medical practitioner. (S.53 Cr.PC.)
12. Information regarding the arrest and the place of detention should be communicated by the Police Officer effecting the arrest without any delay to the Police Control Room and District / State Headquarters. There must be a monitoring mechanism working round the clock.
13. As soon as the person is arrested, Police Officer effecting the arrest shall make a mention of the existence or non-existence of any injury(s) on the person of the arrestee in the register of arrest. If any injuries are found on the person of the arrestee, full description and other particulars as to the manner in which the injuries were caused should be mentioned in the register, which entry shall also be signed by the Police Officer and the arrestee. At the time of release of the arrestee, a certificate to the above effect under the signature of the Police Officer shall be issued to the arrestee.
14. If the arrestee has been remanded to Police custody under the orders of the Court, the arrestee should be subjected to medical examination by a trained Medical Officer every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. At the time of his release from the Police custody, the arrestee shall be got medically examined and a certificate shall be issued to him stating therein the factual position of the existence or nonexistence of any injuries on his person.

(c) Post Arrest :

1. The person under arrest must be produced before the appropriate Court within 24 hours of the arrest (Ss 56 and 57 Cr.PC).
2. The person arrested should be permitted to meet his lawyer at any time during the Interrogation.
3. The Interrogation should be conducted in a clearly identifiable place, which has been notified for this purpose by the Government. The place must be accessible and the relatives or friend of the person arrested must be informed of the place of interrogation taking place.
4. The methods of Interrogation must be consistent with the recognized rights to life, dignity and liberty and right against torture and degrading treatment.

The following Guidelines are based on the Cr.P.C. Amendment Acts, 2008 & 2010, Section 41 Cr.P.C. relating to the power of Police to arrest without warrant, which has been substantially amended :

The Amendment intends that the powers of arrest conferred upon the Police Officer must be exercised after reasonable care and justification. The major change is that it is now compulsory for the police to record the reasons both for making as well as for not making an arrest on the basis of a complaint or information or reasonable suspicion in respect of a cognizable offence for which the maximum punishment prescribed is 7 years or less. Henceforth, no person can be arrested for a complaint or suspicion of involvement in such an offence without a warrant unless:

- (a) Such person commits a cognizable offence in the presence of a police officer;
or
- (b) When the cognizable offence is punishable with imprisonment for a term which is less than 7 years or may extend upto 7 years, the police officer has reason to believe that such person has committed the offence and is satisfied that such arrest is necessary,
- (i) to prevent such person from committing any further offence; or

- (ii) for proper investigation of the offence; or
- (iii) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
- (iv) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case; or
- (v) to ensure his presence before the court as and when required.

In all cases where the arrest of a person is not required under the provisions of sub section (1) of section 41, the police officer shall, issue a notice (in the form of notice given below) directing the person to appear before him and to comply with the terms of notice. He/she can be arrested if such person fails to comply with such direction.

Form of Notice to be issued as per section 41 (A) Cr.P.C.

Office Address

NOTICE

In exercise of the powers conferred under sub section (1) of section 41(A) of Cr.P.C., I hereby inform you that during the investigation of FIR No..... U/sregistered at Police Station, it is revealed that there are reasonable grounds to question you to ascertain facts and circumstances from you. Hence you are directed to appear before me atam/pm on.....at.....Police Station.

Signature :

Date:
(affix seal)

Name and Designation :

The Police Officer while making any arrest shall (a) bear an accurate, visible and clear identification of his name for easy identification, (b) prepare a Memorandum of Arrest which shall be attested by atleast one witness and countersigned by the person attested and (c) inform the person attested that he has a right to have a relative or a friend named by him to be informed of his arrest.

When any person is arrested for any offence and interrogated by the Police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout the interrogation.

The present Central Control Room will function as the District Control Room, required as per Section 41 (C) of Cr.P.C. A Notice Board shall be kept outside the Control Room to display the details of persons arrested on the day and previous day and the designation of the Police Officers, who made the arrests. All SHOs of the District shall inform necessary details to the District Control Room with copy to the CRB immediately after they arrest any person. The particulars to be communicated are the Name of the accused/Name of the father of the accused/Age/Sex/Address of the accused/Place at which arrested/Time of arrest/Date of arrest/Crime No./Section of law/Police Station/Name of arresting officer/Rank/Designation.

Guidelines for arrest under Sec. 498 (A) & 406 IPC cases:

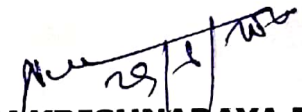
The Delhi High Court in Crl. M (M) 3875/2003 in '**Court on its Own Motion Vs CBI**' made the following **observations /directions regarding arrests under section 498A/406 IPC**. The Court observed that Sections 498 (A)/406 IPC which "are much abused provisions and exploited by the police and the victims to the level of absurdity, every relative of the husband, close or distant old or minor is arrested by the police unless the allegations are very serious nature and highest magnitude arrest should always be avoided".

In the judgment in criminal appeal Nos. 696/2004,748/2004,787/2004 and 749/2004 pronounced on 1/11/2007, the Delhi High Court observed that "In all these cases in the name of investigation, except recording statement of complainant and her few relatives nothing is done by police. The police does not verify any circumstantial evidence nor collect any other evidence about the claims made by the complainant's family claiming spending of huge amounts is collected by the police. This all is resulting into gross misuse of the provision of law".

Arrest of accused should be an exception and not a rule/routine from the allegations set out on FIR and other subsequent allegation or material collected during investigation. If necessary, only the prime /main accused whose primary role on commission of the offence has been established, should be arrested and that too after the prior written approval of the SP.

In a nutshell, the IOs/SHOs shall mandatorily comply the above directions in dealing with cases u/s 498(A)/406 IPC.

// By order //


(**NALLAM KRISHNARAYA BABU**)
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Distribution :
All concerned