

Criminal Writ Petition No. 1666 of 2010

Veena Sippy v. Narayan Dumbre

2012 SCC OnLine Bom 339 : (2012) 114 (2) Bom LR 1103 : (2012) 3 AIR Bom  
R 30

(BEFORE A.S. OKA AND A.V. POTDAR, JJ.)

Miss Veena Sippy Major, Indian Inhabitant, Occupation - Business,  
R/at. 5A/31, Shyam Niwas, Warden Road, Bombay - 400 026 .  
.... Petitioner

v.

- (1) Mr. Narayan Dumbre, then Senior Inspector of Police, Gamdevi Police Station.
- (2) Mr. M.B. Waghmare, Police Sub Inspector.
- (3) Mr. Shyam Chavan, Then Assistant Commissioner of Police, Gamdevi Police Station.
- (4) Mr. Sharad Naik, Police Inspector.
- (5) The State of Maharashtra Gavdevi Police Station .....  
Respondents  
Ms. Veena Sippy, Petitioner in Person.  
Mr. S.V. Marwadi for Respondent Nos. 1 to 3.  
Mr. M.K. Kocharekar for Respondent No. 4.  
Mrs. Prajakta P. Shinde, A.P.P Respondent No. 5 - State.

Criminal Writ Petition No. 1666 of 2010

Decided on March 5, 2012

JUDGMENT (PER A.S. OKA, J):

As per the administrative order dated 8<sup>th</sup> February, 2012 passed by the Hon'ble the Chief Justice, this Petition has been assigned to this Bench. As per the earlier order of the Division Bench, we have taken up this petition for final hearing.

2. By this Writ Petition under Article 226 of the Constitution of India, the Petitioner appearing in person has complained that the officers of Gamdevi police station, Mumbai illegally detained her from 5<sup>th</sup> April, 2008 till 6<sup>th</sup> April, 2008. Her grievance is that a false case alleging commission of offence under Section 117 read with Section 112 of the Bombay Police Act, 1959 (hereinafter referred to as "the said Act of 1959") was registered by the said officers against her and ultimately the prosecution has resulted into an order of discharge dated 15<sup>th</sup> July, 2008. By this Petition, she has claimed compensation of Rs. 10 lakhs. The first Respondent in this Petition is the Senior Inspector of police attached to Gamdevi Police station. The second Respondent is Sub-Inspector of Police attached to Gamdevi Police station. The third Respondent was the then Assistant Commissioner of police Gamdevi Division having his office at Gamdevi Police Station. The fourth Respondent is also an Inspector of Police. The Petitioner appearing in person has made a statement before us that she has no grievance against the fourth Respondent. The fifth Respondent is the State of Maharashtra.

3. The case of the petitioner as set out in the petition is that on 4<sup>th</sup> April. 2008. she

had lodged a complaint with Gamdevi police station. She visited the said police station on 5<sup>th</sup> April, 2008 for collecting the copy of the First Information Report (for short 'F.I.R.') which she was expecting to be registered on the basis of her complaint. According to her case, she reached the police station at about 5.00 p.m. Her case is that when she asked for a copy of the F.I.R., the second Respondent who was the officer on duty very rudely told her that no F.I.R has been registered and it is not going to be registered. Her case is that the first and third respondents were present at the police station at the relevant time. On the first floor of the police station, there is an office of the third respondent who was at the relevant time, the Assistant Commissioner of Police of Gamdevi Division. The case of the Petitioner is that though his visiting hours are 4.00 to 6.00 p.m., after noticing the presence of the Petitioner, the third respondent closed his chamber from inside and sent a message to the Petitioner to wait for 10 minutes. Afterwards the third Respondent told the petitioner that she should meet him at 6.00 p.m. as he was busy. Her case is that after knocking at his door repeatedly without any response, she was told to go down to the Duty Officer and register the FIR.

4. According to the case of the petitioner, she informed the first and third Respondents that if the FIR was not registered, she would proceed to Mr. Rakesh Maria, Joint Commissioner of Police (Crime). Upon telling this, the second respondent at the behest of the first respondent started saying in very derogatory manner that he had seen many like the petitioner and he would teach her a lesson. The second respondent thereupon informed the petitioner to go to Nair hospital in Mumbai for medical check-up. The petitioner informed the first and second respondents that when she had visited the police station previous night for registering the FIR, she was taken to Nair hospital for the check-up. The allegation of the petitioner is that thereupon the first respondent tried to snatch the statement in her hand and called upon the petitioner to produce the papers of the medical check-up conducted earlier night. The petitioner informed the first respondent that she was unable to do so and it was the duty of the one Mr. Nitin Mane who was the officer on duty in the police station at the relevant time to provide the papers of medical check-up. It is alleged by the Petitioner that the first and second respondents called a lady constable. Her grievance is that the second respondent and the lady constable manhandled her and forcibly made her sit down. She alleged that she was overpowered by the police personnel. Her allegation is that she was forcibly taken to Nair Hospital for check-up and thereafter, she was taken to Azad Maidan police lock up where she was detained. She stated that on the way to Azad Maidan police lock-up, the second Respondent asked her about her family details when the petitioner disclosed that she only has a very sick mother at home. She stated that after she was put up in the police lock-up, she repeatedly asked on what charges she has been imprisoned but, there was no reply. She stated that an assurance was given that she would be released at 7.30 p.m. Thereafter, she was told that she would be released at 8.30 p.m. She stated that she was not released. On the next day at about 12.30 p.m., she was taken to the Court of the learned Metropolitan Magistrate which is known as Esplanade Court. She stated that she explained to the learned Magistrate that she has been falsely implicated and on application made by her, she was released on bail on Personal Bond in the sum of Rs. 700/-. She stated that the case before the learned Magistrate was adjourned from time to time. She stated that when the case was fixed on 21<sup>st</sup> April, 2008, the concerned police officer failed to turn up when the learned Magistrate admonished the other police person present on the ground that no charge sheet was filed. She stated that she was given charge sheet only on 26<sup>th</sup> May, 2008. Though several chances were given to the prosecution witnesses to appear, none appeared and finally on 15<sup>th</sup> July, 2008 the learned Magistrate discharged the petitioner.

5. The case made out by the Petitioner is that she was shown as arrested in gross breach of the directions issued by the Apex Court in the case of *D.K. Basu v. State of West Bengal* [AIR 1997 SC 610]. She stated that there was no arrest panchanama drawn evidencing the alleged arrest and no information about the alleged arrest was conveyed to her mother. Her contention is that the Respondents have violated the fundamental right of the petitioner under Article 21 of the Constitution of India. She alleged the violation of even Article 22 of the Constitution of India. Her contention is that she was illegally detained on 5<sup>th</sup> and 6<sup>th</sup> April, 2008 and thus she has suffered physically, mentally and financially. Her case is that she was illegally made an accused and was harassed and was illegally detained in police lock-up. Her case is that her 90 years old sick mother was not informed about her arrest. She has alleged that she is residing in a fabulous sea face house and it was impossible to her to adjust to the conditions of the police lock-up. She stated that she could not sleep as she was made a sleep on the floor. She has alleged that the toilet and bath room in the lock-up had no door. She has stated that she was crammed in one room with about 40 prisoners. She stated that not only her image has been tarnished but she has undergone a trauma. Her case is that as the charge against her was groundless, the police did not dare to remain present before the Court. She has prayed for compensation of Rs. 10 lacs.

6. On 26<sup>th</sup> July, 2010, the second respondent filed an affidavit-in-reply. When the matter came up before this Court on 3<sup>rd</sup> August, 2010, this Court recorded displeasure about the fact that affidavit-in-reply was filed by an officer against whom serious allegations have been made. This Court observed that it is but appropriate that the Commissioner of Police himself inquires into the entire episode after giving an opportunity to the Petitioner and submits a report to this Court. The Commissioner of Police submitted the enquiry report dated 19<sup>th</sup> September, 2010 to this Court. After the report was submitted, the petitioner was permitted to amend the petition. On 27<sup>th</sup> April, 2011, this Court issued notice for final disposal at admission stage. On 21<sup>st</sup> June, 2011, this Court issued Rule. On 28<sup>th</sup> August, 2011 this Court directed that the petition should be fixed under the caption of "Final Disposal" on 31<sup>st</sup> September, 2011.

7. The first respondent filed affidavit-in-reply dated 2<sup>nd</sup> February, 2011. The third respondent filed an affidavit-in-reply dated 3<sup>rd</sup> February, 2011. On the same day even the second respondent filed another affidavit. The fourth respondent also filed his affidavit-in-reply on 3<sup>rd</sup> February, 2011. The petitioner filed affidavit in rejoinder dated 15<sup>th</sup> March, 2011. Thereafter, this Court permitted the petitioner to file written submissions in which she claimed compensation of Rs. 1 crore without amending the petition.

8. We have perused the petition and annexures thereto as well as the affidavits on the record. We have perused the written submissions of the petitioner appearing in person. We have heard the petitioner appearing in person. She has relied upon various decisions of this Court and Apex Court. She submitted that till the time she was taken to the police lock-up, she was not even informed that she was arrested. She stated that her mother was never informed about her arrest. She stated that she was not informed by any of the respondents that she is entitled to bail as the matter of right as the offence alleged against the petitioner was a bailable offence. She submitted that the first to third respondents have committed breach of the directions issued by the Apex Court in the case of *D.K. Basu (Supra)*. She submitted that as there is no arrest panchanama drawn, her detention firstly at the police station and thereafter, in the police lock-up is completely illegal and violative of Articles 21 and 22 of the Constitution of India. She stated that after she was produced before the learned

Magistrate, she was informed by some one to apply for bail in a particular manner and accordingly she wrote an application on which she was granted bail. She criticized the report dated 19<sup>th</sup> September, 2010 submitted by the Commissioner of Police. She submitted that no proper action has been taken against the first and third respondents. She pointed out that in a case where a retired Judge of the Apex Court was granted compensation of Rs. 100 crores for defamation, this Court granted stay subject to deposit of Rs. 20 crores which order has been confirmed by the Apex Court. She, therefore, submitted that she is entitled to compensation of Rs. 1 crore.

9. The learned counsel appearing for the first to third respondents made submission as regard the conduct of the petitioner by making a reference to affidavit of the first respondent. He submitted that when a notice under Section 149 of the Code of Criminal Procedure, 1973 was issued to the petitioner, she has made false and unjustified allegations against the first respondent. He invited our attention to the entry made by the second respondent in the station diary at 5.35 p.m. on 5<sup>th</sup> April, 2008. He submitted that the entry is made regarding the arrest of the petitioner in exercise of powers under Section 79 of the said Act of 1951. He pointed out that the entry records that though the petitioner was told to deposit "compromise amount", she did not pay the amount. He submitted that this reference is to the information given to the petitioner that she is entitled to apply bail. He stated that in terms of the guidelines issued by the Apex Court, the Petitioner was immediately taken to Nair Hospital for medical check-up and was produced before the learned Magistrate on the next date in the afternoon. He submitted that in the remand application made by the second respondent, the ground on which the petitioner has been arrested has been disclosed. He stated that the fact that the petitioner applied for bail shows that the petitioner was fully aware of her rights. He submitted that the Petitioner's mother was immediately informed about the arrest as reflected from the entry made in the station diary. He submitted that the first respondent left the police station at about 5.30 p.m. and therefore he is not responsible for what transpired in the police station after 5.30 p.m. He submitted that there is no illegality committed by the first and second Respondents. He submitted that the fact that the petitioner is discharged is no ground to claim compensation. The learned counsel further pointed out that as far as the third respondent is concerned, he has played no role. He stated that the affidavit filed by the third respondent discloses that at the relevant time the third respondent was discussing some pending work with the officers and in order to avoid getting disturbed, he told the petitioner to wait outside his chamber for some time. He stated that he called the petitioner to his chamber and told her that if she had any grievance, she should meet the duty officer and senior inspector on the ground floor of the police station. He stated that thereafter the petitioner has never complained to the third respondent. The learned counsel also pointed out the factual statements made by the second respondent which disclose that there is no illegality committed by any of the respondents. We have heard the learned counsel appearing for the fourth Respondent. However, we are not dealing with his submission as the petitioner appearing in person fairly stated that she does not desire to make any grievance against the fourth respondent. We have also heard the learned A.P.P for the State. Relying upon the affidavits on record, she contended that no illegality has been committed by the Respondents.

10. We have heard the petitioner appearing in person by way of rejoinder. She reiterated that this was a case of gross violation of Article 21 of the Constitution of India. She submitted that her case will have to be treated on par with the case of the retired Judge of the Apex Court who has been awarded compensation of Rs. 100/- crores.

11. We have given careful consideration to the submissions. Before averting to the factual details of the case, a reference will have to be made to the decision of the Apex Court in the case of *D.K. Basu (Supra)*. A reference will have to be made to what is held in paragraph Nos. 34 to 36 which reads thus:

*"34. In addition to the statutory and constitutional requirements to which we have made a reference, we are of the view that it would be useful and effective to structure appropriate machinery for contemporaneous recording and notification of all cases of arrest and detention to bring in transparency and accountability. It is desirable that the officer arresting a person should prepare a memo of his arrest at the time of arrest in the presence of at least one witness who may be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. The date and time of arrest shall be recorded in the memo which must also be countersigned by the arrestee.*

*35. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:*

*(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 designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.*

*(2) That 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 at least one witness, who may either be 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 informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting 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 the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.*

*(5) The person arrested must be made aware of this 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 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 that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.*



(8) *The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.*

(9) *Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his 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.*

*36. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned 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."*

*(Emphasis added)*

In the case of *Sheela Barse v. State of Maharashtra* ([1983] 2 SCC 96), the Apex Court issued certain directions. The relevant part of paragraph 4 of the decision reads thus:

*"(iii) Whenever a person is arrested by the police without warrant, he must be immediately informed of the grounds of his arrest and in case of every arrest it must immediately be made known to the arrested person that he is entitled to apply for bail."*

*(Emphasis added)*

12. The first issue to be considered is whether the directions given by the Apex Court in the case of *D.K. Basu* (Supra) and *Sheela Barse* (supra) have been complied with. In the present case, it is not disputed that the offence punishable under Section 117 read with Section 112 of the said Act of 1951 is a bailable offence. Sections 112 and 117 of the said Act of 1951 reads thus:

*"112. Misbehaviour with intent to provoke a breach of the peace. - No person shall use in any street or public place any threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned.*

*117. Penalties for offenders under Sections 99 to 116.- Any person who contravenes any of the provisions of section 99 to 116 (both inclusive) shall, on conviction, be punished with the fine which may extend to [twelve hundred rupees]."*

Thus, the only penalty for the contravention of Section 112 is fine which may extend to Rs. 1200/-. In the present case, it is alleged by the first to third respondents that the Petitioner was arrested without warrant in exercise of power under Section 79 of

the said Act of 1951 which reads thus:

*"79. Power of Police to arrest without warrant when certain offences committed in his presence. - Any Police Officer may, without an order from a Magistrate and without a warrant, arrest any person committing in his presence any offence punishable under Section 117 or Section 125 or Section 130 or sub-clause (i), (iv) or (v) of section 131 or clause (i) of section 135 in respect of contravention of any order made under section 39 or 40."*

In the light of the averments made in the petition that till the petitioner was taken to Azad Maidan police lock-up, she was not informed about the fact that she was arrested, a reference will have to be made to the affidavits filed on record. The affidavit which is filed first in point of time is dated 25<sup>th</sup> July, 2010 by the second respondent. In paragraph No. 3 of the affidavit, the second respondent has stated that:

*"3. I say that I was attached to Gamdevi Police Station from 2006 to 2009. I further say that on 5.4.2008 from 8.00 a.m. to 8.00 p.m., I was assigned the duty "of the Station House Officer in Gamdevi Police Station, Mumbai. On the said date, at about 17.00 hrs. the Petitioner came at the Gamdevi Police Station and started using abusive language to the Police. Hence, she was kept on continuing her activities, hence, she was taken into custody under section 79 of Bombay Police Act and action vide LAC No. 996/2008 under sections 112, 117 of Bombay Police Act was taken against her. I further say that she was apprised of her arrest and she was informed to deposit cash surety to the tune of Rs. 1200/- and to produce surety in her favour, however she refused the same, hence, the information was given to her mother namely Mrs. Savitribai A. Sippy over telephone. Thereafter, she was sent to Nair Hospital along with a lady Police Constable namely Ms. Paresh bearing B. No. 1332 for medical check up and thereafter, she was kept at Lock up Room at Azad Maidan Police Station Ladies Lock up room. I say that necessary Station Diary Entry bearing No. 40 dated 5.4.2008 was recorded at Gamdevi Police Station. I crave leave to refer to and rely upon the copy of the Station Diary Entry bearing No. 40 dated 5.4.2008, kept at Gamdevi Police Station, Mumbai as and when required by this Hon'ble Court. I respectfully say and submit that at the time of making the said entry, it is specifically mentioned that she may make complaint application to the higher authorities for the purpose of damage to the police."*

(emphasis added)

Thus, the case of the second respondent is that the petitioner was taken in custody in exercise of powers under Section 79 of the said Act of 1951 in connection with LAC No. 996 of 2008 under Section 112 read with Section 117 of the said Act of 1951. In the affidavit, the statement is that the petitioner was immediately apprised of her arrest and she was informed to deposit cash security to the tune of Rs. 1200/- and to produce a surety. The second respondent has relied upon entry No. 40 recorded at 17.35 in the station diary. It must be noted that it is an admitted position in the present case that there was no arrest panchanama or memo drawn and there was no entry made in the arrest register of the police station. In the station diary entry made at 17.35 p.m., it is recorded that the petitioner visited the police station at 17.00 hours and it is alleged that she started shouting by using improper words as regards offence registered against her with the same police station. It is alleged that she misbehaved and created a scene. It is further stated in the said entry that in exercise of power conferred on the second respondent under Section 79 of the said Act of 1959, the petitioner was taken in custody and was referred to the Nair Hospital for medical

check up. It is further stated that she was apprised of the offence alleged against her and she was told to deposit an amount for compromise/compounding (in marathi language "tadjod rakkam"). It is alleged that she declined to deposit the said amount and therefore, her mother Savitribai was telephonically informed about her arrest. It is pertinent to note that it is not even alleged in the long station diary entry made that the petitioner used threatening, abusive or insulting words or behaved with intent to provoke breach of peace or whereby a breach of peace may be an occasioned. There is no reference to any breach of peace in the station diary. In the further part of the same entry, it is alleged that there were complaints of the local residents against the petitioner. It is alleged that the petitioner has been making false allegations against the police and it is specifically alleged that the petitioner gets offended by the action take against her and makes a complaint against the second respondent thereby causing loss to the second respondent. It is specifically stated that it is only in view of this conduct of the petitioner that the entry was being made in the station diary. Thus the reason for making such entry in the station diary is that the Petitioner has a tendency of complaining against the police and especially against the second respondent. Apart from this entry, there is no separate entry of the arrest of the petitioner.

13. At this stage, a reference will have to be made to the affidavit of the first respondent who was posted at the relevant time as Inspector of Police in Gamdevi police station. He has made a reference to the complaints/N.C. complaints lodged against the petitioner and notice under Section 149 of the said Code issued by him to the Petitioner. He stated that on 4<sup>th</sup> April, 2008, one Aarti Chhabria and her mother came to the police station with a complaint of assault and abuse by the petitioner. After some time, even the petitioner came to the police station with a complaint against the said Aarti Chhabria and others regarding assault and abuse over car parking in the premises of a housing society. He has stated that PSI Mane after hearing both the parties referred both the parties to Nair Hospital for medical examination. It is alleged that both the parties went to the Nair Hospital, but they did not return. He further stated that after examining the witnesses and after considering the medical papers, the said PSI Mane submitted a report to him. In clause "F" of paragraph 3 of the affidavit, the first respondent has stated thus:

"F).....

*Thereafter on the evening of 5<sup>th</sup> April, 2008 the Petitioner attended the Gamdevi Police Station and started making enquiry as to what happened to her complaint and why inspite of the fact that she has given a serious complaint which discloses cognizable and non cognizable offence, police did not register her case and her F.I.R. to that effect. The Respondent No. 2 was then the duty officer who called for all the papers and after examination of the same brought to her notice that so far as investigation carried out by PSI Mane and as per my endorsement no offence of cognizable nature was disclosed on both the complaints and therefore her complaint will be recorded as N.C. complaint. The petitioner therefore started making all sorts of allegations against the officers of Gamdevi Police Station. She threatened by shouting at Respondent No. 2 that she will complaint against every body to Joint Commissioner of Police. The Respondent No. 2 politely told her that he cannot register the the F.I.R. as there is nothing on record to substantiate her say in her complaint and if she is aggrieved by not registration of the offence, she should approach higher authority. The Petitioner then came to my cabin and complained me against the act of the Respondent No. 2. I again told her that since the investigation conducted by PSI Mane shows that no cognizable offences was disclosed as per the complaint, Gamdevi Police Station cannot register her case or record her F. I. R. This again enraqed her as she already had a*



*grudge against me, she started making several statements against me and she told me that she will now complaint to Joint Commissioner of Police (Crime) Shri Rakesh Maria against me and other officers."*

In clause "G" of the same paragraph, he stated that he was granted permission to leave the police station at 5.30 p.m. However, in clause "H" he has stated thus:

*"H)...*

*Thereafter the Petitioner was explained the ground of her arrest and she was told that she will be arrested in a bailable offence and she can be released on payment of the bail amount of Rs. 1,200/- however she refused. Thereafter, she was referred to the Nair Hospital for medical examination as well as Constable Mukesh Raghav Palav was deputed to give intimation of her arrest to her mother. Since the Gamdevi Police Station had no women lock up cell, she was sent with proper guard to the Azad Maidan Police Women Lock Up Cell, for her production before the Ld. Magistrate who attends Holidays' Remands."*

Thus, in the first affidavit filed by the second respondent, he came out with the case that the petitioner was informed to deposit cash surety to the tune of Rs. 1200/- and to produce a surety. In the affidavit of the first respondent, he has stated that the Petitioner was informed that she can be released on payment of bail amount of Rs. 1200/. He has not stated that the petitioner was told to produce surety. The station diary entry made at 17.35 hours which is referred to above does not record that the petitioner was informed that she has a right to seek bail. It is merely stated therein that the petitioner was told to deposit compounding/compromise amount which she declined to pay. Even by going the case of the second respondent that he made the entry at 17.35 hours in the station diary, the said entry makes no reference to the offer given to the petitioner to enlarge her on bail on payment of cash surety. It is pertinent to note that the maximum penalty for contravention of Section 112 of the said Act of 1951 is fine to the extent of Rs. 1200/-. The station diary records that the petitioner was told to deposit the amount which was required for compounding the offence. The entry in the station diary has been made earliest in point of time which does not record that the petitioner was informed about her right to seek bail. What is stated in the affidavits of the first and second respondents referred to above is not only an afterthought but there is an inconsistency in the versions of the said two respondents. It is further necessary to note that on 3<sup>rd</sup> February, 2011, the second respondent filed another affidavit wherein it is merely mentioned that:

*"1) (A)....*

*I further submit that as per the procedure she was informed the ground of arrest and it was also necessary that before she should be sent further on her refusal to furnish surety, she should be medically examined."*

Thus, the second respondent who allegedly made the diary entry has come out with another version in the subsequent affidavit. As far as the affidavit of third respondent is concerned, he has stated nothing on this aspect. Going by the station diary entry which is made earliest in point of time, and the inconsistent versions of the first and second Respondents, the only conclusion which can be recorded is that the petitioner was never informed that she has a right to seek bail and on the contrary, the petitioner was told to deposit the requisite amount for compounding the alleged offence.

14. There is one more serious aspect which needs to be noted. The entry in the station diary and the first affidavit of the second respondent records that the petitioner's mother was telephonically informed about the arrest of the petitioner. However, the first respondent in clause "H" of paragraph 3 of the affidavit has stated that constable Mukesh Raghav Palav was deputed to give intimation of her arrest to her mother. He has not stated that her mother was intimated about the arrest telephonically. He has not even stated that the said Mukesh Raghav Palav actually gave intimation to the mother and he has merely stated that the said constable was deputed to give information. On the face of it, this stand taken in the affidavit of the first respondent is completely falsified by the entry in the station diary and the statement on oath made by the second respondent in his first affidavit. As far as this aspect is concerned, surprisingly, the second respondent in his subsequent affidavit filed on 3<sup>rd</sup> February, 2011 has stated in paragraph 1A that an intimation was sent to the Petitioner's mother through Police Constable Palve. Thus, it is obvious that the second respondent is not sure in what manner the intimation was given. It is pertinent to note that the first and second respondents are represented by the same advocate. To the affidavit of fourth respondent, he has annexed enquiry report dated 19<sup>th</sup> September, 2010 submitted by the Commissioner of police and in the enquiry report, it is stated that the Commissioner has recorded the statements of all the police officers. From the said order, it appears that the first and second respondents did not take a stand before the Commissioner that a police constable was deputed to inform the petitioner's mother about her arrest. On this aspect clause (iii) of the order of the Commissioner is relevant which reads thus:

*"(iii) As per the said SDE no. 40, the mother of the arrestee, Smt. Savitri Sippy was informed over telephone regarding the arrest of the Petitioner Miss. Veena Sippy. The Petitioner has, however, alleged that no such information about her arrest was conveyed to her mother.*

*In this regard, statement of Smt. Savitri Sippy was recorded at her residence as she is over 90 years old. On being asked whether she was informed of her daughter's arrest on 05/04/2008 by the Gamdevi Police Station, she has stated that "I don't remember but I don't think so".*

*P.S.I. Waghmare, on other hand, has stated that he had indeed informed the mother of the Petitioner Miss Veena Sippy over the telephone and that the telephone no. was available on police station record of previous complaints given by the Petitioner.*

*In this regard, the complaint given by the Petitioner to the Gamdevi Police Station on 04.04/2008 was checked and it was found containing a telephone no. 23512206. Report has since been obtained from MTNL which shows that the said no. was functioning at the residence of the Petitioner Miss Veena Sippy during the relevant period i.e. April, 2008.*

*In view of above, based on entry made in the Station Diary, it can be presumed that the mother of the Petitioner was informed regarding her arrest."*

It is interesting to note that though the Commissioner has recorded that intimation was given to the mother of the petitioner on telephone number mentioned in the report, neither in the affidavit nor in the said report it is disclosed that a call was made to the said telephone number of the petitioner from a particular telephone connection available at the police station. If the a telephonic intimation was really given to the petitioner's mother, the details such as the telephone number from which the call was made to the petitioner's mother and the time of call should have been disclosed. If the

Commissioner can obtain a report from MTNL as regards the telephone number of the Petitioner, he could have obtained the call details of the calls made on the said number on the relevant date especially when there is a denial on oath by the Petitioner. Therefore, we are constrained to observe that the case sought to be made out by the first and second respondents that the petitioner's mother was informed about the arrest is not at all true. There is absolutely no material placed on record by any of the respondents to show that the petitioner's mother was informed about the alleged arrest.

15. Thus, to summarize:

(a) Admittedly there is no arrest memorandum or Panchanama drawn in terms of directions contained in clause 2 of paragraph 35 of the decision of the Apex Court in the case of *D.K. Basu* (Supra);

(b) In terms of clause 4 of the said directions, even an intimation of the arrest of the petitioner was not given to the petitioner's only relative i.e. her mother;

(c) As found by the Commissioner of police, admittedly there was no entry made of the arrest in the arrest register of the police station;

(d) Not only that the Petitioner was not informed about her right of seeking bail, the Petitioner was called upon to deposit the requisite amount for compounding the alleged offence;

(e) The entry No. 40 made in the station diary by the second respondent has been made only because it is alleged that the petitioner was in the habit of making complaints against the police and the second respondent;

(f) The entry made in the station diary does not specifically record that the petitioner contravened section 112 of the said Act of 1951 by a particular conduct and it is merely stated that the Petitioner was taken into custody in exercise of power under section 79 of the said Act of 1951. Even assuming that the the conduct of the Petitioner recorded in the entry is taken as true, it does not make out a case of contravention of Section 112 of the said Act of 1951.

(g) inspite of the opportunities granted by the learned Magistrate, none appeared for the prosecution which lead to discharge of the Petitioner. The order of discharge was not challenged by the State.

16. After the petitioner was medically examined in the Nair Hospital, she was put in Azad Maidan police lock up along with 40 other persons. She remained in the police lock-up till 12.30 p.m. on the next day. She was produced before the learned Magistrate at 12.30 p.m. and thereafter, she was enlarged on bail. Therefore, this is a case of not only gross breach of the directions issued by the Apex Court, but this is a case of gross and flagrant violation of the fundamental right of life and liberty conferred on petitioner by Article 21 of the Constitution of India. The petitioner was illegally and highhandedly detained in the police custody from 5<sup>th</sup> April, 2008 to 6<sup>th</sup> April, 2008. The detention of the petitioner in the police custody is totally unlawful. We must make a note of another serious aspect of the matter. The Division Bench by order dated 30<sup>th</sup> August, 2010 expressed displeasure about the fact that the State Government has chosen to file an affidavit of the second respondent against whom serious allegations have been made. This Court ordered the Commissioner of Police to hold an enquiry. There is no reply filed by the State Government to this Petition. The first to fourth respondents have filed their affidavits. But, they are not represented by

the Public Prosecutor and they have engaged their own Advocates.

17. Now, the second question before us is whether the Petitioner is entitled to the compensation and if it is held that the Petitioner is entitled to be compensation, what should be the amount of compensation. Before we deal with this question, it must be reiterated here that we have found that the Petitioner appearing in person was illegally detained without complying with the mandatory directions laid down by the Apex Court in the case of *D.K. Basu* (Supra). The Petitioner had visited the police station for obtaining a copy of the F.I.R. which she was expecting to be registered on the basis of the complaint lodged by her on earlier day. In none of the affidavits and in particular the affidavits of Respondent Nos. 1 and 2, the words allegedly used by the Petitioner have been set out. Neither in the affidavits nor in the entry made in the station diary, the words allegedly uttered by the Petitioner have been set out. The Petitioner who is a woman was detained overnight in police lock-up in connection with alleged offence which was bailable and punishable only with the fine of maximum amount of Rs. 1200/-. This is a case where the gross violation of Article 21 is proved on the face of it and it is incontrovertible. The illegal detention of a women in the Azad Maidan police lock up in this fashion shocks the conscience of this Court.

18. As far as prayer for compensation is concerned, a reference will have to be made to the decision of the Apex Court in the case of *Neelabati Behera (Smt) v. State of Orissa* [1993 (2) SCC 746]. The Apex Court dealt with a claim of compensation in public law on account of the violation of the fundamental rights. In paragraph Nos. 17 and 18 of the decision, the Apex Court has held thus:

*"17. It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for the enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.*

*18. A useful discussion on this topic which brings out the distinction between the remedy in public law based on strict liability for violation of a fundamental right enabling award of compensation, to which the defence of sovereign immunity is inapplicable, and the private law remedy, is to be found in Ratanlal & Dhirajlal's Law of Torts, 22<sup>nd</sup> Edition, 1992, by Justice G. P. Singh, at pages 44 to 48."*

(emphasis added)

In paragraph Nos. 20 and 22 of the said decision, it is held thus:

*"20. We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, wherein that is the only mode of redress, available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate."*

*"22. The above discussion indicates the principle on which the Court's power under Article 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in Rudul Sah in that line have to be understood and Kasturilal distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son."*

(emphasis added)

Subsequently, there is a decision of the Apex Court in the case of *Suber Singh v. State of Hariyana* [2006 (3) SCC 178]. In paragraph No. 46 of the decision, the Apex Court has summarized the law on the availability of public law remedy for seeking compensation. Paragraph No. 46 reads thus:

*"In case where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, the Courts may award compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions: (a) whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of an magnitude to shock the conscience of the Court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroborative evidence, or where there*



*are clear indications that the allegations are false or exaggerated fully or in part, the Courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action."*

There is a recent decision of the Apex Court dated 9<sup>th</sup> September, 2011 in the case of *Raghuvansh Dewanchand Bhasin v. State of Maharashtra* (CRIMINAL APPEAL NO. 1758 of 2011). The Apex Court has again made a reference to the law on the aspect of taking recourse to public law remedy for grant of compensation. In paragraph No. 9 of the decision, the Apex Court has observed thus:

*"9. It needs little emphasis that since the execution of a non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest cannot be issued mechanically, but only after recording satisfaction that in the facts and circumstances of the case, it is warranted. The Courts have to be extra-cautious and careful while directing issue of non-bailable warrant, else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India. At the same time, there is no gainsaying that the welfare of an individual must yield to that of the community. Therefore, in order to maintain rule of law and to keep the society in functional harmony, it is necessary to strike a balance between an individual's rights, liberties and privileges on the one hand, and the State on the other. In deed, it is a complex exercise. As Justice Cardozo puts it "on the one side is the social need that crime shall be repressed. On the other hand, the social need that law shall not be flouted by the insolence of offence. There are dangers in any choice." Be that as it may, it is for the court, which is clothed with the discretion to determine whether the presence of an accused can be secured by a bailable or non-bailable warrant, to strike the balance between the need of law enforcement on the one hand and the protection of the citizen from highhandedness at the hands of the law enforcement agencies on the other. The power and jurisdiction of the court to issue appropriate warrant against an accused on his failure to attend the court on the date of hearing of the matter cannot be disputed. Nevertheless, such power has to be exercised judiciously and not arbitrarily, having regard, inter-alia, to the nature and seriousness of the offence involved; the past conduct of the accused; his age and the possibility of the absconding."*

In paragraph No. 19, the Apex Court has proceeded to observe thus:

*"The power and jurisdiction of this Court and the High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution of India to a victim whose fundamental rights under Article 21 of the Constitution are violated are thus, well-established. However, the question now is whether on facts in hand, the appellant is entitled to monetary compensation in addition to what has already been awarded to him by the High Court. Having considered the case in the light of the fact situation stated above, we are of the opinion that the appellant does not deserve further monetary compensation."*

(emphasis added)

19. Hence, we hold that the Petitioner can seek compensation on the ground of violation of fundamental right under Article 21 of the Constitution.

20. The present case is a case of patent and uncontroverted violation of Article 21 of the Constitution of India. Now, the question is as to what should be the compensation.

The Petitioner appearing in person has placed reliance on the decision of this Court in the case of *Nirmal Bhavarlar Jain* (Supra). This was a case where allegation was made of illegal detention in violation of the directions contained in the decision of the Apex Court in the case of *D.K. Basu* (Supra). This was a case where the Petitioner before the Division Bench of this Court was illegally detained on 8<sup>th</sup> September, 2000 and was enlarged on bail on 16<sup>th</sup> September, 2000. In this case where the Petitioner was unlawfully detained in the year 2000 for a period of eight days was granted compensation of Rs. 1 lac together with interest at the rate of 8% per annum from the date of illegal detention. In the case of *Chandrabhan Rama Dhengle v. Indirabai Chandrabhan Dhengle* [1998 (1) Mh.L.J. 235] which was a case of illegal detention of the Petitioner for a period of 63 days in the year 1995, this Court directed payment of compensation of Rs. 50,000/- to the Petitioner. In the case of *Prema Bangar Swamy v. State of Maharashtra* [2004 (2) MH. L. J 993], where an accused was illegally detained for the period of 2 years and 9 months after the Petitioner was acquitted, the Division Bench directed payment of compensation of Rs. 2 lacs. We must state here that the Petitioner in person has relied upon an interim order passed by this Court in First Appeal arising out of a decree passed in a suit. The decree was passed in a suit filed by a retired Judge of the Apex Court wherein he claimed compensation on account of act of defamation. Considering the evidence on record, the Trial Court passed a decree for payment of damages of Rs. 100/- crores. While admitting the Appeal and while considering the prayer for grant of stay, this Court directed the Appellant-Defendant to deposit a sum of Rs. 20/- crores in the Court and to furnish Bank Guarantee for rest of the decretal amount as a condition of grant of stay. However, this Court directed investment of the amount of Rs. 20/- crores till the disposal of the Appeal. The interim order of this Court has been confirmed by the Apex Court. The order of this Court passed in First Appeal arising out of a money decree passed by a regular Civil Court after adjudication cannot be the basis to determine compensation payable to the Petitioner.

21. In this Writ Petition under Article 226 of The Constitution of India, we cannot record evidence to quantify the amount of compensation. Notwithstanding the grant of compensation in this public law remedy, the Petitioner can always take recourse to regular remedy available for claiming compensation over and above what is granted by this Court. The Petitioner claimed compensation of Rs. 1/- crore in the written submissions. The said prayer cannot be considered as she has not amended the petition where the claim of Rs. 10,00,000/- has been made. Considering the aforesaid decisions, even the claim of Rs. 10,00,000/- appears to be on the higher side. In the present case we are dealing with the illegal detention of a woman for a period of one day in the year 2008 for commission of a bailable offence punishable with maximum fine of Rs. 1,200/-. Though the Petitioner was arrested in connection with commission of an offence which was admittedly bailable, the Petitioner was not even made aware of her right to be released on bail. The Petitioner's mother was not even informed about the arrest. As stated earlier, without informing the Petitioner about the arrest and without drawing even the arrest panchanama, she was kept in the Azad Maidan police lock up. In the Petition, she has alleged that she was kept in one room along with 40 other persons. She has alleged that the toilet and bath room in the lock-up has no doors. She has alleged that she was suffocated as there was no fresh air in the lock up. These factual assertions which are found in the paragraph Nos. 43 to 49 of the Petition have not been disputed in any of the affidavits filed on record. The Petitioner who is a women had to spend a night in the police lock up along with 40 persons in inhuman conditions. Considering the aforesaid circumstances, we deem it fit to quantify the compensation payable in the present case at Rs. 2,50,000/- with interest thereon at the rate of 8% per annum from 5<sup>th</sup> April, 2008 i.e. the date from which she

was illegally detained. The State Government will have to pay the compensation. We quantify the costs payable to the Petitioner at Rs. 25,000/- as the Petitioner had to appear before this Court atleast on 22 occasions. It is always open for the State Government to recover the compensation and costs amount from the erring officers after fixing their liability.

22. We make it very clear that we have expressed no opinion on the merits of the disciplinary proceedings initiated against the concerned police officers.

23. Hence, we pass the following order:

:: ORDER ::

i. We hold that the detention of the Petitioner by the officers of Gamdevi Police Station from 5<sup>th</sup> April, 2008 to 6<sup>th</sup> April, 2008 is illegal and there has been a gross violation of the fundamental right of the Petitioner guaranteed by Article 21 of the Constitution of India.

ii. We direct the 5<sup>th</sup> Respondent-State of Maharashtra to pay compensation of Rs. 2,50,000/- to the Petitioner together with interest thereon at the rate of 8% per annum from 5<sup>th</sup> April, 2008 till the realization or payment. We direct the State Government to pay costs quantified at Rs. 25,000/- to the Petitioner. We grant time of six weeks to the State Government to pay the said amounts to the Petitioner by an account payee cheque. It will be also open for the fifth Respondent - State Government to deposit the amounts in this Court within the stipulated time. In such event it will be open for the Petitioner to withdraw the said amount.

iii. We clarify that it is open for the State Government to take proceedings for recovery of the amount of compensation and costs from the officers responsible for the default, if so advised.

iv. Petition stands dismissed as against the Respondent No. 4.

vi. We make it clear that it will be open for the Petitioner to adopt a regular remedy for recovery of compensation/damages in addition to the amount directed to be paid under this Judgment.

vii. Rule is made partly absolute on the above terms.

viii. We direct the office of the public prosecutor to forward a copy of this Judgment to the Director General of Police as well as to the Chief Secretary of the State Government.