

STANDING ORDER NO. 330/2008

GUIDELINES FOR ARREST

The Hon'ble Supreme Court of India in the matter of Joginder Kumar Vs State of UP (CrI. WP 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 bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest.
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 also prescribed in the judgement:-

1. An arrested person being held in custody is entitled, if he so requests to have one friend 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 Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 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 designations. The particulars of all such police personnel who handle interrogation 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 at least 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 counter signed 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 the 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 of the district or town through the Legal Aid Organization in the District and the police station of the area concerned telephonically/ 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 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 is custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, 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 through out 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 Supreme Court of India also directed that failure to comply with the said requirements 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 Delhi High Court in CrI. 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 498A/406 IPV 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 a recent judgement 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. No evidence about giving of dowry or resources of the complainant's family claiming spending of huge amounts is collected by the police. This all is resulting into gross misuse of the provisions of law.....”.

The Hon'ble Mr. Justice Kailash Gambhir, High Court of Delhi, in Bail Application No.1627/2008 titled “Chander Bhan & Anr. Vs State” passed, inter-alia, the following guide lines to be strictly followed by the police authorities:-

- “(A) (i) No case under Section 498-A/406 IPC should be Registered without the prior approval of DCP/Addl. DCP.
 - (ii) Arrest of main accused should be made only after thorough investigation has been conducted and with prior approval of the ACP/DCP.
 - (iii) Arrest of the collateral accused such as father-in-law, mother-in-law, brother-in-law or sister-in-law etc. should only be made after prior approval of DCP on file.
- (B) Police should also depute a well trained and a well behaved staff in all the crime against women cells especially the lady officers, all well equipped with the abilities of perseverance, Persuasion, patience and forbearance.
 - (C) FIR in such cases should not be registered in a routine manner.
 - (D) The endeavour of the police should be to scrutinize complaints very carefully and then register FIR.
 - (E) The FIR should be registered only against those persons against whom there are strong allegations of causing any kind of physical or mental cruelty as well as breach of trust.
 - (F) All possible efforts should be made, before recommending registration of any FIR, for reconciliation and in case it is found that there is no possibility

of settlement, then necessary steps in the first instance be taken to ensure return of stridhan and dowry articles etc. by the accused party to the complainant”.

The earlier Standing Order issued vide No. 80033-132/C&T (AC-5)/ PHQ dated 21 /12 /07 is hereby withdrawn.

(Yudhbir Singh Dadwal)
Commissioner of Police,
Delhi

Order Book No. 02/Record Branch (PHQ)
Dated:08/10/2008

No. **301-600** /HAR (PHQ)/AC-I Dated the **08/10/2008**

Copy forwarded for information and necessary action to the:-

1. All Special Commissioners of Police, Delhi.
2. Managing Director, Delhi Police Housing Corporation, Delhi.
3. All Joint Commissioners of Police, Delhi.
4. All Additional Commissioners of Police, Delhi.
5. Principal/PTC, Jharoda Kalan, Delhi
6. All Deputy Commissioners of Police of Districts/ Units, including FRRO, Delhi/ New Delhi.
7. SO to Commissioners of Police, LA to Commissioners of Police, and F.A. to C.P., Delhi.
8. All ACsP in PHQ.
9. ACP/IT Centre with the direction to upload the Standing order in Intra DP net.
10. All ACsP Sub Division.
11. P.A. to C.P., Delhi.
12. All SHOs/Delhi Police through their respective DCsP with the direction to place the Standing Order in register No.3 Part-1 of the Police Stations.
13. All Inspectors/ PHQ, including Reader to CP, Delhi
14. Librarian/ PHQ.
15. Record Branch/PHQ with 10 spare copies.

