



STANDING ORDER NO. 330/2019

GUIDELINES FOR ARREST

1. INTRODUCTION:

An arrest is a procedure in a criminal justice system which is caused by using legal authority to deprive a person of his or her freedom of movement. The arrestee is taken into custody for questioning, to safeguard from influencing/threatening witnesses or destruction of evidence, to prevent escape or for evading the due process of law etc. Probable cause of an arrest is a reasonable belief of the police officer in the guilt of the suspect, based on the facts and information prior to the arrest. For instance, an arrest may be legitimate in situations where the police officer has a reasonable belief that the suspect has either committed a crime or is about to commit a crime. Police and various other officers have powers of arrest although certain conditions must be met before taking such action. As a safeguard against the abuse of power, it requires that an arrest must be made for a thoroughly justified reason.

2. JUDGMENTS/OBSERVATIONS OF COURTS REGARDING ARRESTS

The Hon'ble Supreme Court of India in the matter of WP(Crl.) No. 9/1994 "Joginder Kumar Vs State of UP" vide its order dated 25.04.1994 made the following observations:-

"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. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be

prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest shall 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. 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."

For effective enforcement of the fundamental rights guaranteed under Articles 21 and 22(1) of the Constitution of India, the following requirements were 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.
4. The police officer making an arrest should also record in the case diary, the reasons for making the arrest.

On 18.12.1996, the Hon'ble Supreme Court of India in WP(Crl) No. 592/1987 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 in 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 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 above mentioned 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.

3. **JUDGMENTS/OBSERVATIONS OF COURTS ON ARRESTS IN MATRIMONIAL MATTERS OR IN CASES WHERE IMPRISONMENT IS LESS THAN OR EXTENDS TO SEVEN YEARS**

The Hon'ble Supreme Court of India in SLP (Crl.) No. 1277/2014 titled "Arnesh Kumar Vs. State of Bihar & Anr." has issued the following directions pertaining to arrest in cases under section 498-A of IPC and Section 4 of Dowry Prohibition Act and in offences punishable with imprisonment upto a term which may be less than seven years or which may extend to seven years, whether with or without fine:-

- (1) The police officers not to automatically make arrest when a case under section 498A IPC is registered but to satisfy themselves about the necessity for the arrest under the parameters laid down under section 41 Cr.P.C., which is reproduced below:-

Section 41 Cr.P.C. when Police may arrest without warrant-

(1) "Any police Officer may without an order from a Magistrate and without a warrant, arrest any person -

(a) x x x x x

(b) Against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied:-

(i) x x x x x

(ii) the police Officer is satisfied that such arrest is necessary -

(a) to prevent such person from committing any further offence;
or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing."

Provided that a police officer shall, in all cases where the arrest of person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

(II) The police officer shall enter the details in check list under section 41(1)(b)(ii) specifying the reasons and materials which necessitated the arrest. He shall also enclose a copy of check list duly filled in

while producing the accused before the Magistrate for further detention. The check list is enclosed herewith as **Annexure "A"**.

- (III) The decision not to arrest an accused be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Addl.CP/DCP of the District concerned for the reasons to be recorded in writing;
- (IV) Notice of appearance in terms of section 41A Cr.P.C. (refer Standing Order No. 109/2019) be served on the accused within two weeks from the date of institution of case which may be extended by the Addl.CP/DCP of the District concerned for the reasons to be recorded in writing.
- (V) Further Section 41A Cr.P.C. as amended by section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 Act reads as under:-
 - (A) 41A Cr.P.C. : Notice of appearance before a police officer :
 - (1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue the notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.
 - (2) Where such a notice is issued to any person, it shall be the way of the person to comply with the terms of the notice.
 - (3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.
 - (4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice."

Arrest in the aforesaid provision has to be followed in context of Section 41 Cr.P.C.

- (VI) On failure to comply with the above directions laid down by the Hon'ble Supreme Court, the police Officers concerned shall be liable for departmental action and shall also be liable for punishment for contempt of court to be instituted before High Court having territorial jurisdiction.

The directions aforesaid shall not only apply to the cases U/s 498A IPC or Section 4 of Dowry Prohibition Act but also in such cases where the offence is punishable with imprisonment for a term which may be less than seven years; or which may extend to seven years; whether with or without fine.

The Delhi High Court in its order dated 28.01.2004 in Crl. M (M) 3875/2003 'Court On Its Own Motion Vs CBI' made the following observations/directions regarding arrests under section 498A/406 IPC:-

"Sections 498A/406 IPC are much abused provisions and exploited by the police and the victims to the level of absurdity and are of such nature which can be investigated without arrest and do not fall under the category of being of highest magnitude and prescribing severest punishment or minimum punishment, every relative of the husband, close or distant, old or minor is arrested by the police. By arresting such relatives whose arrest may not be necessary for completing the investigation, as it can be completed by recording the statement of victim, her parents and other witnesses, police assumes the role of breaker of homes and not the maker as once any relative of the husband is sent to jail, the marriage ends for all practical purposes and divorce and other miseries are bound to follow. Unless the allegations are of very serious nature and highest magnitude arrest should always be avoided".

In a judgement in Criminal Appeal Nos. 696/2004, 748/2004, 787/2004 and 749/2004, pronounced on 1.11.2007, the Hon'ble High Court of Delhi observed the following:-

"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."

In a judgement in Bail Application No. 135/2017, pronounced on 16.02.2017, the Hon'ble High Court of Delhi observed the following:-

"This Court is of the considered opinion that in matters of matrimonial cases, the Investigating Officer is required to first make out whether any article is to be recovered. In case, he is of the view that any article is to be recovered then he is to decide whether the custodial interrogation of any of the accused is required for the purpose of recovery of article. Without reaching to the conclusion with regard to recovery of article, whether it is stridhan article or any other article, the Investigating Officer is not to arrest the person for the recovery of the same."

On 12.07.2011, Hon'ble Mr. Justice Kailash Gambhir, High Court of Delhi in Bail Application No.1627/2008 "Chander Bhan & Anr. Vs State" passed, inter-alia, the following guidelines 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 the 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 the 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”.

4. ARREST OF SENIOR CITIZENS IN FAMILY MATTERS

In pursuance of the directions of Hon'ble High Court of Delhi dated 10.09.2018 in WP(Crl) No. 503/2018 titled Shashi Kumar Mahajan Vs Commissioner of Police, Delhi a Committee of senior police officers was constituted for laying down guidelines for arrest of senior citizens in family matters. After due deliberations, the Committee has framed the following guidelines to be followed regarding arrest of senior citizens in family matters:-


1. There are no specific direction(s) in the existing laws which provide special treatment regarding arrest of senior citizens, although there are various provisions under law and different Court judgements of the Apex Court which safeguard the interest of the arrestee including senior citizens, namely:-
 - Joginder Kumar Vs State of Uttar Pradesh (25th April, 1994)
 - D. K. Basu Vs State of West Bengal (18th December, 1996)
 - Arnesh Kumar Vs State of Bihar & Ors (2nd July, 2014)
2. As per maintenance and welfare of Parents and Senior Citizens Act, 2007, a “Senior Citizen” is any person, being a citizen of India, who has attained the age of sixty years or above.
3. The issue of arrest has come into focus since it is observed that in some matrimonial disputes, there are occasions when in addition to the allegation of demand of dowry or harassment,

allegations of violence, molestation, rape and unnatural sex etc. are made against the extended family members and relatives, some of whom are senior citizens. The IO must tread cautiously and take due care in all such cases. The available evidence should be weighed properly before taking any coercive action against any such person, especially the senior citizen(s).

4. If at all arrest is required, the IO shall satisfy himself of the desirability of the arrest, looking into aspects such as the person's age, health condition, his/her chances of escaping or evading the process of law etc. If there is sufficient evidence against the senior citizen and the IO is of the opinion that arrest is required, prior approval of the concerned DCP shall be taken before making arrest. The guiding principle is that the arrest of a senior citizen should not be done in a mechanical or routine manner.
5. All the provisions of law, besides the guidelines of the Hon'bles Supreme Court and Delhi High Court, regarding arrest, must be followed meticulously and in true letter and spirit.

5. SUPERSESSION CLAUSE:

This Standing Order supercedes the earlier Standing Order issued vide No. 301-600/HAR (PHQ)/AC-I dated 08/10/2008.


12/12/2019
(AMULYA PATNAIK)
COMMISSIONER OF POLICE,
DELHI

O.B. No. 27/Record Branch (PHQ) Dated: 12/12/2019

No. 4051-4250/Record Branch (PHQ)/AC-I Dated the 12/12/2019

Copy forwarded for information and necessary action to:-

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.

CHECK LIST

(As per direction of Hon'ble Supreme Court in the matter of Arnesh Kumar Vs State of Bihar)

Name and parentage of the accused		
FIR No. & section of law in which arrested		
Whether arrest is necessary as per the guidelines		
Reasons for arrest:		
1.	Whether arrest is necessary to prevent the accused from committing any further offence.	Yes/No
2.	Whether the accused is a previous convict or previously involved in a criminal case; give details, if any (attach separate sheet).	Yes/No
3.	Whether the accused has previously jumped, bail, parole, furlough, sentence etc.	Yes/No
4.	Whether there is a chance of jumping bail or avoiding judicial proceeding by the accused.	Yes/No
5.	Whether the accused is having permanent residence in Delhi.	Yes/No
6.	Whether the address of the accused is required to be verified	Yes/No
7.	Whether there is further requirement of accused in discovery of facts.	Yes/No
8.	Whether assistance of the accused is required for effecting the recovery of case property.	Yes/No
9.	Whether the accused is required for necessitating the arrest of co-accused.	Yes/No
10.	Whether the accused is required for custodial	

	case and to reach to the right conclusion of the case/investigation.	
11.	Whether there are chances of the accused causing the evidence of the offence to disappear or tampering with such evidence in any manner which may affect the investigation.	Yes/No
12.	Whether the arrest is necessary for proper investigation of the case.	Yes/No
13.	Whether the arrest of accused is necessary to stop him from making any inducement/threat/promise to the witness(es) of the case or any person connected with the case to dissuade him from disclosing the facts of the case in the court or to the Police Officer, which may affect investigation.	Yes/No
14.	Whether presence of the accused cannot be ensured at the time of requirement.	Yes/No
15.	Whether the accused is in a position of influence over the witness(es).	Yes/No
16.	Whether police custody of the accused is required for the purpose of investigation.	Yes/No
17.	Whether the accused is required for taking voice sample, blood sample, semen sample, sputum, hair sample, nail clipping, DNA profiling, specimen signature/writing etc.	Yes/No
18.	Whether the accused is required for TIP, joint interrogation or confrontation with other accused/person(s) etc.	Yes/No

Note: If necessary, separate sheet be attached to clarify the points of the check list.