

(2012) 12 BOM CK 0056

In the Bombay High Court

Case No : Criminal Writ Petition No. 856 of 2012

Niraj Ramesh Jariwala and Others

APPELLANT

Vs

Mahadeo Pandurang Nikam, Police Sub-Inspector, Navghar
Police Station, Mumbai and Others

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(1), 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 41, 41B, 57
Penal Code, 1860 (IPC) — Section 323, 34, 406, 498A, 504

Citation : (2013) 1 ABR 624 : (2013) ALLMR(Cri) 1 : (2013) 2 BomCR(Cri) 260

Hon'ble Judges : S.S. Shinde, J;A.S. Oka, J

Bench : Division Bench

Advocate : Sachin Deokar instructed by Mr. V.V. Purwant, for the Appellant; D.B. Shukla instructed by y Shri Yogesh D. Dalvi for Respondent No. 1 and Shri A.S. Gadkari, APP for the State, for the Respondent

Judgement

A.S. Oka, J.—This is one more glaring case of gross violation of Article 21 of the Constitution of India and that also at the hands of the Police machinery which is supposed to be protector of common man. The victims are the second and third Petitioners who are senior citizens. We may note here that by an order dated 31st October, 2012, we directed that the Writ Petition shall be heard and disposed of finally. This Court noted in the said order that what survives for consideration is the prayer Clauses (b) and (d) which concern illegal detention of the second and third Petitioners. The first Petitioner and the third Respondents are husband and wife. The Second and third Petitioners are parents of the first Petitioner. On 29th November, 2011, at the instance of the third Respondent, the first Information Report was registered with Navghar Police Station, Mumbai, complaining about the offences under Sections 498A, 406, 323, 504 read with Section 34 of the Indian penal Code against the Petitioners. As far as the arrest of the Second and third Petitioners is concerned, following are the admitted facts which are borne out from the record.

(i) The Respondent No. 1 who was at the relevant time Sub-Inspector of Police attached to Navghar Police Station, Mumbai was deputed to Aurangabad under the permission of the Assistant Commissioner of Police, Mulund Region. The station diary entry to that effect has been recorded at 10.40 on 2nd December, 2011.

(ii) The first Respondent took the second and third Petitioners into custody at 22.50 on 2nd December 2011 at Aurangabad, but were not shown as arrested. The first Respondent brought them to Bombay.

(iii) The station diary entry dated 3rd December, 2011 records that at 20.20, the second and third Petitioners were produced before the Senior Inspector of Police Shri Bhorde of Navghar police station. It is recorded that the first Respondent was investigating into the offence. It is recorded that the Second and third Petitioners were placed in the custody of the two Police Constables bearing buckle Nos. 97015 and 8040305.

(iv) The Station Diary entry of 4th December 2011 at 08.10 shows that the second and third Petitioners were shown as arrested and the information about their arrest was conveyed to one Manoj Baburao Nishandar, Solapur on his cell phone.

(v) On 4th December 2011, the second and third Petitioners were taken from the Police station at 10.45 for producing them before the Court of the learned Metropolitan Magistrate. They were actually produced before the learned Metropolitan Magistrate at 15.05 on 4th December 2011 and they were enlarged on bail.

(vi) We must note that the aforesaid facts are admitted facts.

2. We may note here that the order dated 19th June 2012 of this Court records that the investigation of the case has been transferred to Vikhroli Police Station and, therefore, the notice was issued only as regards the prayer clauses (b) to (d). The prayer (b) is for issuing direction to take action against the first Respondent for non-compliance with the directions issued by the Apex Court in the case of D.K. Basu Vs. State of West Bengal, . Prayer (c) is for grant of compensation on account of illegal arrest. Prayer (d) is for directing the fourth Respondent to initiate disciplinary proceedings against the first Respondent. The learned counsel appearing for the Petitioners pointed out that going by the record, the first Respondent took the second and third Petitioners into the custody at 20.50 on 2nd December 2011 at Aurangabad. The first Respondent brought them to Navghar Police Station at 20.20 on 3rd December 2011. However, till 8.10 on 4th December 2011, they were not shown as arrested though they were in custody continuously from 20.50 on 2nd December 2011. It is urged that this action is patently illegal and is in violation of Articles 21 and 22 of the Constitution of India as well as Section 57 Code of Criminal Procedure, 1973 (hereinafter referred to as "the CRPC"). He pointed out various allegations made in the Petition as regards inhuman treatment meted out to the second and

third Petitioners in the onward journey from Aurangabad to Navghar Police Station at Mulund. He pointed out that both the second and third Petitioners were senior citizens on the relevant date. His submission is that apart from initiating action in accordance with law, in view of gross violation of the guidelines laid down by the Apex Court in the case of D.K. Basu (supra) and in view of violation of Articles 21 and 22 of the Constitution of India, the Petitioners are entitled to substantial amount by way of compensation.

3. The learned counsel appearing for the first Respondent, apart from the earlier affidavit dated 2nd April 2012, has tendered additional affidavit affirmed on 3rd December 2012. His submission is that the first Respondent has acted as per the instructions of the Senior Inspector of Police of Navghar Police Station and as per the instructions of the said officer, he brought the second and third Petitioners to the Navghar Police Station and has made an entry in the station diary in the night of 3rd December 2011 showing that they were produced before the Senior Inspector of Police who in turn handed over their custody to the two Police Constables. He submitted that all further actions at the police station are by the Senior Inspector of Police and the first Respondent has merely followed his directions. He denied the allegations made in the Petition. He pointed out that though the second and third Petitioners were taken into custody at 20.50 on 2nd December 2011, onward journey from Aurangabad to Mumbai took 20 hours and, therefore, if the period of 20 hours is excluded, the second and third Petitioners were produced before the learned Magistrate within 24 hours from the time of arrest. His submission is that neither there is any violation of Articles 21 and 22 of the Constitution of India nor Section 57 of the CRPC. He urged that all the guidelines laid down in the case of D.K. Basu (supra) have been complied with. He, therefore, submitted that there is no illegality committed by the first Respondent.

4. The learned APP has produced the station diary and all the relevant documents before this Court. He pointed out that all the relevant station diary entries were made by the first Respondent and the illegality has been committed by the first Respondent. As regards compliance with the directions in the case of D.K. Basu (supra), he urged that the station diary records that the reasons for arrest were informed to the second and third Petitioners and their close relatives. However, he could not show us any Memorandum of Arrest drawn in compliance with the directions in the case of D.K. Basu (supra). He urged that as the entire default is on the part of the first Respondent, even if this Court is inclined to direct compensation to be paid, the same will have to be made payable by the first Respondent.

5. Before dealing with the factual aspects, it will be necessary to make a reference to the directions issued by the Apex Court in the case of D.K. Basu (supra). Paragraphs 35 to 38 thereof read thus :

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.

37. The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier.

38. These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

(emphasis added)

7. It is also necessary to make a reference to what is laid down in Paragraph 4 of the decision of the Apex Court in the case of Sheela Barse Vs. State of Maharashtra, . In Paragraph 4 of the said decision, it is held thus:-

4. We may now take up the question as to how protection can be accorded to women prisoners in police lock-ups. We put forward several suggestions to the learned Advocate appearing on behalf of the petitioner and the State of Maharashtra in the course of the hearing and there was a meaningful and constructive debate in court. The State of Maharashtra offered its full cooperation to the Court in laying down the guidelines which should be followed so far as women prisoners in police lock-ups are concerned and most of the suggestions made by us were readily accepted by the State of Maharashtra. We propose to give the following directions as a result of meaningful and constructive debate in court in regard to various aspects of the question argued before us:

(i) We would direct that four or five police lock-ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constables. Female suspects should not be kept in a police lock-up in which male suspects are detained. The State of Maharashtra has intimated to us that there are already three cells where female suspects are kept and are guarded by female constables and has assured the Court that two more cells with similar arrangements will be provided exclusively for female

suspects.

(ii) We would further direct that interrogation of females should be carried out only in the presence of female police officers/constables.

(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. The Maharashtra State Board of Legal Aid and Advice will forthwith get a pamphlet prepared setting out the legal rights of an arrested person and the State of Maharashtra will bring out sufficient number of printed copies of the pamphlet in Marathi which is the language of the people in the State of Maharashtra as also in Hindi and English and printed copies of the pamphlet in all the three languages shall be affixed in each cell in every police lock-up and shall be read out to the arrested person in any of the three languages which he understands as soon as he is brought to the police station.

(v) We would direct that in the City of Bombay, a City Sessions Judge, to be nominated by the principal Judge of the City civil court, preferably a lady Judge, if there is one, shall make surprise visits to police lock-ups in the city periodically with a view to providing the arrested persons an opportunity to air their grievances and ascertaining what are the conditions in the police lock-ups and whether the requisite facilities are being provided and the provisions of law are being observed and the directions given by us are being carried out. If it is found as a result of inspection that there are any lapses on the part of the police authorities, the City Sessions Judge shall bring them to the notice of the Commissioner of Police and if necessary to the notice of the Home Department and if even this approach fails, the City Sessions Judge may draw the attention of the Chief Justice of the High Court of Maharashtra to such lapses. This direction in regard to police lock-ups at the district headquarters shall be carried out by the Sessions Judge of the district concerned.

(vi) We would direct that as soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform him about the arrest; and lastly....

(emphasis supplied)

7. It will be also necessary to make a reference to the decision of the Apex Court in the case of *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others*, and in particular paragraph 118 which reads thus :

118. In case the arrest is imperative, according to the facts of the case, in that event, the arresting officer must clearly record the reasons for the arrest of the accused before the arrest in the case diary, but in exceptional cases where it becomes imperative to arrest the accused immediately, the reasons be recorded in the case diary immediately after the arrest is made without loss of any time.

(emphasis added)

It will be also necessary to make a reference to the decisions of the Apex Court in the case of M.C. Abraham and Another, A.K. Dhote and J.F. Salve and Another Vs. State of Maharashtra and Others, . In Paragraph 14 of the said decision, the Apex Court held thus:-

14. Tested in the light of the principles aforesaid, the impugned orders dated 10-1-2002 and 11-1-2002 must be held to be orders passed by overstepping the parameters of judicial interference in such matters. In the first place, arrest of an accused is a part of the investigation and is within the discretion of the investigating officer. Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Obviously, he is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the court has no role to play. Since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. Obviously, the power has to be exercised with caution and circumspection.

(emphasis added)

8. In the light of the aforesaid law laid down by the Apex Court, now the facts of the case will have to be appreciated. The station diary entry made at 22.50 hours on 2nd December 2012 by the Usmanpura Police Station, Aurangabad records that the first Respondent who was the Sub Inspector of Police of Navghar Police Station, Mumbai, informed that he was taking the second and third Petitioners from their residence at Aurangabad for the purposes of investigation of the offence registered at the instance of the third Respondent. It will be necessary to make a reference to the version of the first Respondent in the first affidavit dated 2nd April 2012. In Paragraph 5 of the said affidavit, he has stated thus:-

5. I say that after the registration of the offence, investigation commence and pursuant whereof, the Petitioner No. 2 & 3 were taken into in the custody for

purpose of the investigation and I have visited the house of the Petitioner and take them to local police station and accordingly the concern police station was informed for taking them to Mumbai for the purpose of investigation and entry in police Station Usmanpura at Aurangabad was made.

(emphasis added)

9. Thus, the first Respondent himself has admitted that he had taken the second and third Petitioners into custody for the purposes of investigation. Thus, there is no doubt that in the night of 2nd December 2011 at about 22.50, the first Respondent took the second and third Petitioners into custody at Aurangabad and the first Respondent brought them to Navghar Police Station at Mulund, Mumbai. The station diary entry at 20.20 of 3rd December 2011 of Navghar Police Station, Mumbai records that the first Respondent produced the second and third Petitioners before the Senior Inspector of Police Shri Bhorde. It also records that the Accused (Second and third Petitioners) were handed over in the custody of the two Police Constables. As far as this aspect is concerned, the version of the first Respondent in his first affidavit is very vague. The same reads thus:-

After reaching to the Mumbai to concern Police Station i.e. Navghar Police Station they have produced before Senior Police Officer. During course of initial investigation reveal the involvement of the Petitioner Nos. 2 and 3 and therefore, they were come to be arrested. Accordingly they have been produced before the concern Court and Hon"ble Court was pleased enlarge them on bail.

(emphasis added)

The version of the first Respondent in the subsequent affidavit reads thus:-

The Petitioner and Respondent reached to Mumbai at about 8.20 p.m. by that time Court hours are over. The Respondent No. 1 produced the Petitioner Nos. 1 & 2 before the Senior Officer and accordingly diary made. The Senior Officer directed the respondent No. 1 to keep them in rest room as the accused cannot be produced before the court even if there would take decision of their arrest save and except on next day. Therefore, the senior P.I. personally made an enquiry with the Accused. The copy of Station House diary entry at Sr. No. 46 dated 3.12.2011 is annexed hereto and marked as Exhibit "D".

(emphasis added)

Undisputedly only on 4th December 2011 at 08.10, the second and third Petitioners were shown as arrested and were produced before the learned Metropolitan Magistrate, Bhoiwada at 15.05 on the same day.

10. Thus, the arrest of the second and third Petitioners made by the first Respondent at Aurangabad is just before 20.50 on 2nd December 2011. At that time no entry of arrest was made in the station diary at Usmanpura Police Station, Aurangabad in terms of the guidelines laid down by the Apex Court.

There was no Arrest Memo drawn at Aurangabad. In terms of the decision in the case of Sheela Barse (supra), though the third Petitioner is a woman, she was not informed about her right to apply for bail. Within 24 hours from 20.50 on 2nd December 2011, they were not produced before the nearest Magistrate. In fact, the first Respondent ought to have produced them before the learned Magistrate at Aurangabad. Moreover, though they were brought to Navghar Police Station at Mumbai at 20.20 on 3rd December 2011, they were illegally detained in the police station without showing them arrested and were ultimately shown as arrested on the next day morning at 08.10. Shockingly after admitting in the first affidavit that he had taken the second and third Petitioners into the custody at Aurangabad for investigation, in the second affidavit in reply in Paragraph 4, the first Respondent has come out with the following excuse:

Hence, it is submitted that the accused/petitioner No. 2 and 3 were produced within 24 Hours if journey period is excluded as contemplated u/s 57 of the Code of the Criminal Procedure.

11. In so many words, the first Respondent has stated in the first affidavit that the second and third Petitioners have been taken into custody for the purposes of investigation. There is no other mode of taking the Accused into the custody for investigation save and except by arresting them. Thus, the said Petitioners were arrested just before 20.50 on 2nd December 2011 at Aurangabad. But they were shown as arrested in Mumbai at 08.10 on 4th December 2011. They were thus illegally detained by the Police nearly for 35 hours and 40 minutes. The decision in the case of Siddharam Satlingappa Mhetre (supra) was not followed. There is no entry made in the station diary as to why they were arrested. Memorandum of arrest was not drawn. Entry of arrest was not made in the station diary of Usmanpura Police station at Aurangabad. Therefore, this is a case of gross violation of the directions issued by the Apex Court in the case of D.K. Basu (supra), Sheela Barse (supra) and Siddharam Satlingappa Mhetre (supra). This is also a case of gross violation of the Articles 21 and 22 of the Constitution of India as the directions in the case of D.K. Basu (supra) flow from the Articles 21 and 22. It is shocking to note that 12 years after the decision in the case of D.K. Basu (supra) under which directions were issued which were already a part of the earlier decisions of the Apex Court, the officers of the Maharashtra Police have shown a complete disrespect and disregard to the binding directions. We may note here that by introducing Section 41B in CRPC by Section 6 of Amendment Act No. 5 of 2009, the directions in the case of D.K. Basu (supra) have been incorporated in the Statute.

12. Thus, there is a violation of fundamental rights of the second and third Petitioners guaranteed under Article 21 of the Constitution of India. There is also a violation of clauses (1) and (2) of the Article 22 of the Constitution of India. This case of blatant violation of human rights shocks the conscience of the Court.

13. Now the other issue is regarding grant of compensation. In the case of Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , the issue

regarding grant of compensation in a public law remedy was considered by the Apex Court. In Paragraphs 17 and 22, it was 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 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 the 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*¹ 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.

22. The above discussion indicates the principle on which the court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in *Rudul Sah*¹ 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*¹ and others in that line have to be understood and *Kasturilal*⁸ 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.

14. In the case of *Sube Singh Vs. State of Haryana and Others*, , the Apex Court held thus:-

46. In cases 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 a 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.

15. Lastly, on this aspect, it will be necessary to make a reference to the decision of the Apex Court dated 9th September 2011 in the case of *Raghuvansh Dewanchand Bhasin v. State of Maharashtra & Another* (in Criminal Appeal No. 1758 of 2011). In Paragraph 19 of the said decision, the Apex Court held 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)

16. Coming back to the facts of the present case, by taking the affidavits of the first Respondent as it is and going by the record of the Police Station in the form of station diary entries, this is a case where virtually it is an admitted position that the directions contained in the decision in the case of *D.K. Basu* (supra) were breached. Though the Petitioners were in fact arrested at Aurangabad, they were illegally detained for about 36 hours before they were actually shown as arrested and few hours thereafter, they were produced before the learned Metropolitan Magistrate. Thus, there is gross violation of Articles 21 and clauses (1) and (2) of Article 22 of the Constitution of India. As we have narrated earlier, there is no dispute on facts and the aforesaid conclusions follow from the facts which are not disputed. Therefore, this is a case where the second and third Petitioners can seek compensation on the ground of violation of fundamental rights guaranteed under Articles 21 of the Constitution of India in a public law remedy. At this stage, it will be necessary to make a reference to the decision of the Division Bench of this Court in the case of *Veena Sippy Vs. Narayan Dumbre* (2012) ALL MR (Cri) 1263 to which one of us (Shri A.S. Oka, J) is a party. This Court considered various decisions of the Apex Court in which the compensation on account of illegal detention was granted when the public law remedy was adopted. This was a case where the Petitioner who was a woman was illegally detained in contravention of the directions of the Apex Court in the case of *D.K. Basu* (supra). The said judgment shows that the Petitioner therein was illegally detained in police custody from the evening of 4th April 2008 till 12.30 noon of

5th April 2008. In the said decision, this Court granted compensation of Rs. 2,50,000/- with interest thereon at the rate of 8% per annum from the date of illegal detention. This Court also directed payment of costs of Rs. 25,000/-. The State Government has complied with the directions given in the said decision by accepting the same.

17. In the present case, the age of both the Petitioners (second and third Petitioners) is above 60 years. They were arrested at 20.50 on 2nd December 2011 at Aurangabad and were brought to Navghar Police Station, Mulund, Mumbai from Aurangabad at 20.20 on 3rd December 2011. They were taken from Aurangabad at 22.50 and they reached Navghar Police Station, Mulund, Mumbai, nearly after 22 hours. They were shown as arrested in the morning of 4th December 2011 and were released on bail in the afternoon. Though the said Petitioners were arrested just before 20.50 on 2nd December 2011 at Aurangabad, they were shown as arrested in Mumbai at 08.10 on 4th December 2011. They were thus illegally detained by the Police nearly for 35 hours and 40 minutes. As they were not shown as arrested for a period over 35 hours, they could not apply for bail. Apart from gross violation of their fundamental rights, there is a gross breach of the directions issued by the Apex Court from time to time. There is no dispute about the facts. Therefore, in the present case, both the second and third Petitioners are entitled to reasonable compensation of Rs. 2,50,000/- each. Interest payable on the said amount will be at the rate of 8% per annum from the date of filing of the present Petition i.e. 28th February 2012.

18. The other issue is whether the compensation should be made payable by the first Respondent. The first Respondent has submitted that he has acted as per the instructions of the Senior Inspector of Police. Here we may note that the station diary entry made at 20.20 on 3rd December 2011 of Navghar Police Station records that the first Respondent produced the second and third Petitioners before the Senior Inspector of Police Shri Bhorde. Thus, the Senior Inspector of Police was aware at that time regarding illegal detention of the second and third Petitioners. Notwithstanding this, on the next date in the morning at 08.10 hours, the second and third Petitioners were shown as arrested.

19. Whether the first Respondent acted as per the instructions of the Senior Inspector of Police and whether the Senior Inspector of police has played any role are the matters which cannot be decided in writ jurisdiction. Suffice it to say that when the gross violation of fundamental rights under Articles 21 of the Constitution of India at the hands of the police officers of the State is established, the compensation will have to be paid by the State Government and it will be open for the State Government to recover the same from the officers found guilty of dereliction of duty by following due process of law. It is also necessary to direct the Commissioner of Police, Mumbai, to nominate either a Joint Commissioner of Police or Additional Commissioner of Police to hold an inquiry for ascertaining as to who is responsible for violation of fundamental rights of the second and third Petitioners guaranteed under Article 21 of the

Constitution of India. On the basis of the report, the State Government will have to initiate appropriate proceedings against the concerned erring police officers in accordance with law.

20. Before parting with the judgment, we may record here that the learned APP has fairly assisted the Court by pointing out correct factual position and by showing all the relevant entries in the station diary. Accordingly, we dispose of the Petition by passing the following order:

ORDER:

(a) We hold that the detention of the second and third Petitioners by the officers of Navghar Police Station, Mulund, Mumbai, from 2nd December 2011 till 4th December 2011 is illegal and there has been a gross violation of the fundamental right of the second and third Petitioners guaranteed under Article 21 of the Constitution of India;

(b) We direct the Fifth Respondent-State of Maharashtra to pay compensation of Rs. 2,50,000/- each to the second and third Petitioners together with interest thereon at the rate of 8% per annum from 28th February 2012 till realisation or payment. We grant time of eight weeks from today either to pay the amount directly to the second and third Petitioners or to deposit the same in the Court;

(c) We make it clear that it will be open for the State Government to initiate appropriate proceedings for recovery of the said amounts from the erring police officials who are responsible for the illegalities;

(d) We direct the Commissioner of Police, Mumbai, to appoint an appropriate higher officer not below the rank of Joint Commissioner of Police or Additional Commissioner of Police to hold an inquiry for fixing the responsibility for the illegalities committed by the police officers of Navghar Police Station, Mulund, Mumbai. We keep open all the issues in that behalf;

(e) The inquiry shall be completed within a period of three months from today. On the basis of the inquiry report, the State Government shall initiate necessary action against the erring Police Officials;

(f) We direct the State Government to pay costs of this Petition quantified at Rs. 25,000/- to the second and third Petitioners within eight weeks from today;

(g) Costs shall be paid directly to the second and third Petitioners or deposited in this Court within a period of eight weeks from today;

(h) In the event the amount of compensation as well as the amount of costs is deposited in this Court, it will be open for the second and third Petitioners to withdraw the said amounts;

(i) Rule is made partly absolute on above terms;

(j) All concerned to act on authenticated copy of Judgment.