

HIGH COURT OF MADHYA PRADESH : JABALPUR

Endt. No. B/2463 / Jabalpur, dt 20 /05/2021
High Court

The copy of order dated 17-05-2021 passed by Hon'ble Division Bench comprising of Hon'ble the Chief Justice Shri Mohammad Rafiq & Hon'ble Judge Shri Atul Shreedharan in W.P. 9320/2021 dated 17-05-2021 in reference (Suo Motu Vs. State of M.P. & Anr) with W.P. No. 8391/2020 (Madhuri Krishnaswami Vs. State of M.P. & Ors.) along with the copy of order(s) passed by Hon'ble Supreme Court in **Criminal Appeal No. 1277/2014 in the case of Arnesh Kumar Vs. State of Bihar & Ors. dated 02-07-2014 & Sua Moto Writ Petition (C) No. 04/2020 in the matter of In Re Contagion of COVID-19 Virus in Children Protection Homes dated 03-04-2020** is forwarded to :-

- (i) The District & Sessions Judge(s) /, with a request to bring the same into the knowledge of all the Judicial Officers under their kind control for information and necessary action/compliance.
- (ii) The District & Sessions Judge (Inspection & Vigilance), Jabalpur / Indore / Gwalior;
- (iii) The Director Madhya Pradesh State Judicial Academy, Jabalpur for necessary action.
- (iv) The Member Secretary, M.P. State Legal Services Authority, 54, South Civil Lines, Jabalpur for necessary action.
- (v) Director General of Police, State of M.P. Bhopal, for necessary action.
- (vi) Director General of Prisoners, Bhopal, for necessary action.
- (vii) Director, M.P. Police Academy, Bhopal, for necessary action.
- (viii) The Principal Registrar, Bench at Indore/Gwalior High Court of M.P., Jabalpur.
- (ix) P.S. to Hon'ble the Chief Justice, High Court of Madhya Pradesh Jabalpur for placing the matter before His Lordships,
- (x) P.S. to Registrar General/ Principal Registrar(Judl)/ Principal Registrar (Inspection & Vigilance),/ Principal Registrar (Examination) / Principal Registrar (ILR) High court of Madhya Pradesh Jabalpur,
- (xi) Registrar(J-1)/(D.E.)/(A)/ (Vig.)/ (Vl.)/ Member Secretary CWC, High Court of Madhya Pradesh, Jabalpur.
- (xii) Server Room (Computer) for making available in the official website of the High Court under the hyperlink circular/orders etc. in compliance of the orders of Registrar General dated 01-03-2018 & endt No. Reg(IT)/SA/2018/368 dated 01-03-2018.

Vivek Patel
20-05-2021
(VIVEK PATEL)
OSD

THE HIGH COURT OF MADHYA PRADESH: JABALPUR

(Division Bench)

WP No.9320/2021

(IN REFERENCE (SUO MOTU) Vs THE STATE OF MADHYA PRADESH AND OTHERS)

With

WP No.8391/2020

(MADHURI KRISHNASWAMI Vs THE STATE OF MADHYA PRADESH AND OTHERS)

Coram:

Hon'ble Mr. Justice Mohammad Rafiq, Chief Justice

Hon'ble Mr. Justice Atul Sreedharan, Judge

Presence :

Mr. Sankalp Kochar, Advocate appeared as *Amicus Curiae* in W.P. No.9320/2021.

Mr. Chander Uday Singh, Senior Advocate with Mr. Bhavil Pandey, Ms. Nikita Sonwane and Ms. Aditi Pradhan, Advocates for the petitioner in W.P. No.8391/2020.

Mr. Pushpendra Yadav, Additional Advocate General for the respondent-State along with Mr. Arvind Kumar, Director General of Prisons and Mr. Sanjay Pandey, Deputy Inspector General of Jails.

Mrs. Giribala Singh, Member Secretary, M.P. State Legal Services Authority, Jabalpur.

Whether approved for reporting: **Yes**

Heard through Video Conferencing.

ORDER (Oral)

(17.05.2021)

Per: Mohammad Rafiq, Chief Justice:

This Court on 07.05.2021, taking into consideration the circumstances prevailing in the State following the second wave of

Covid-19 pandemic, had taken *suo motu* cognizance of the overcrowded jails in the State of Madhya Pradesh and passed certain orders. On the same date, the Supreme Court also in continuation with its earlier order in **Re: Contagion of Covid-19 Virus in Prisons Suo Moto Writ Petition (Civil) No.1/2020**, passed a fresh order directing *inter alia* that the High Powered Committees constituted by the State Governments shall consider release of prisoners by adopting the guidelines followed by them last year, at the earliest and further directed that all those inmates, who were granted parole in pursuance to the earlier order of the Supreme Court, should be again released on parole for a period of 90 days in order to tide over the pandemic. This Court on 10.05.2021, on the submissions made given by the learned *Amicus Curiae*, learned Advocate General and the Director General of Prisons, had passed the following order:-

“15. Having heard the learned *Amicus Curiae* and the learned Additional Advocate General, this Court, in view of extraordinary situation prevailing in the State, deems it appropriate to direct the respondents to place before the High Powered Committee the following suggestions given by both the Director General of Prisons and the learned *Amicus Curiae*:

I. For convicted prisoners:

The jail authorities should consider granting emergent parole, of atleast 90 days, on usual conditions to the following categories of prisoners:

- i. All male prisoners, who are more than 60 years of age;
- ii. All female prisoners, who are more than 45 years of age;

- iii. All female prisoners, regardless of their age, who are lodged in jail alongwith with their minor children;
- iv. All female prisoners who are carrying pregnancy of whatever duration;
- v. All prisoners on the basis of medical certification found to be suffering from cancer, serious heart ailments such as having: (i) undergone bypass surgery, (ii) valve replacement surgery, (iii) HIV, (iv) Cancer, (v) Chronic Kidney Dysfunction (UTPs requiring Dialysis), (vi) Hepatitis B or C, (vii) Asthma, (viii) Tuberculoses and (ix) disablement of body to the extent of 40% or more;

II. For under-trial prisoners:

- i. The Superintendent of the concerned Jail, should, in respect of those under-trial prisoners, who are facing trial for the offence punishable up to maximum of seven years, with or without fine, obtain their applications for interim bail and forward the same to the District and Session Judge concerned, who shall have the same considered and decided within four days for their release on temporary bail for atleast a period of 90 days, on execution of bail bond and surety, as may be deemed appropriate;
- ii. The Superintendent of Jail, should in respect of those under-trial prisoners, who are covered by the SOP issued by the National Legal Services Authority in December, 2018, obtain their applications for grant of interim bail and similarly forward the same to the District and Session Judge concerned, who shall have the same considered and decided within four days for their release on temporary bail for atleast a period of 90 days, on execution of bail bond and surety, as may be deemed appropriate. In this regard, the assistance of

the District Legal Services Authority may be taken if necessary;

- iii. The following category of under-trial prisoners, may not however be considered for release on interim/temporary bail:-
 - a. those under trial prisoners, who are now in custody for an offence committed by them during the period of interim bail earlier granted to them; and
 - b. those under trial prisoners, who were granted interim bail on the basis of criteria adopted earlier but failed to surrender in time in terms of the bail order and were taken in custody, pursuant to execution of non-bailable warrant.

The meeting of the High Powered Committee for this purpose be convened on 12.05.2021 at the time fixed by the Executive Chairman of the M.P. State Legal Services Authority, either by physical or virtual mode, as may be deemed possible.”

2. Mr. Chander Uday Singh, learned Senior Counsel and Mr. Sankalp Kochar, learned *Amicus Curiae*, have submitted that despite recommendations of the High Powered Committee in its recent meeting held on 12.05.2021, the number of prisoners lodged in different jails of the State of Madhya Pradesh, which was 45,582 on 07.05.2021, as against their total capacity of 28,675, is not going to be substantially reduced. Therefore, the desired object of decongesting the jails may not be achieved. They both suggested that the High Powered Committee ought to consider recommending release of all such convicts on parole, who have either served out one-third of the substantive sentence awarded to them or if sentenced to life imprisonment, have completed incarceration of seven years or more.

Additionally, the learned Senior Counsel and learned *Amicus Curiae* suggested that the High Powered Committee ought to also consider recommending release of all such under-trial prisoners on interim bail, who are facing trial for offences exclusively triable by the Court of Magistrate regardless of the outer limit of the sentence. Third suggestion given by them is that the High Powered Committee should also consider recommending release of all women prisoners, both convicts and under-trial, regardless of the offence for which they have been convicted and the sentence awarded to them or the maximum sentence that may be awarded to them upon conviction.

3. Learned Additional Advocate General and the Director General of Prisons have submitted that they will collate the data under all these three categories and provide the same to the High Powered Committee within a period of three days, for their consideration.

4. The Member Secretary, M.P. State Legal Services Authority, Jabalpur submitted that soon after the receipt of the data covering the aforesaid three categories, request will be made to the Executive Chairman of the M.P. State Legal Services Authority to hold the meeting of the High Powered Committee, for their consideration.

5. The High Powered Committee upon production of necessary data before it, shall in its wisdom, consider the suggestions objectively and shall make its recommendation with or without any modification/conditions, as it may deem fit.

6. Mr. Chander Uday Singh, learned Senior Counsel and Mr. Sankalp Kochar, learned *Amicus Curiae*, have submitted that despite direction issued by the Supreme Court in **Arnesh Kumar vs. State of Bihar and another (2014) 8 SCC 273**, the police in the State is not following the guidelines given in paras 8.1 to 8.4 and paras 11.1 to 11.8 of the said judgment. This explains why there was an enormous increase of approximately 8,000 under-trial prisoners in different jails of the State during the period of lockdown even after release of about 7,500 prisoners-convicts on parole and UTPs on interim bail, pursuant to earlier order passed by the Supreme Court on 23.03.2020.

7. Mr. Pushpendra Yadav, learned Additional Advocate General submitted that steps are being taken to release convicts on parole as per the recent recommendation of the High Powered Committee. As regards UTPs, applications have been moved before the concerned Courts and orders for grant of interim bail to them are likely to be passed shortly. On the question of compliance of directions of the Supreme Court in **Arnesh Kumar (supra)**, learned Additional Advocate General submitted that he will have to seek instructions in the matter to find out whether the Director General of Police has issued general instructions to all the police stations to adhere to the mandatory guidelines issued by the Supreme Court in paras 8.1 to 8.4 and paras 11.1 to 11.8 of its decision in **Arnesh Kumar (supra)**.

8. The Supreme Court in **Arnesh Kumar (supra)** categorically observed that the law mandates that the police officer, before making

arrest of an accused, against whom 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, should record his satisfaction as mandated by Section 41 of the Code of Criminal Procedure (for short the "Code") that his arrest is necessary (i) to prevent such person from committing any further offence; (ii) for proper investigation of the offence; (iii) to prevent such person from causing the evidence of the offence to disappear or tampering with evidence; (iv) to prevent such person from making any inducement, threat or promise to any witness from disclosing facts to the court or to the police officer & (v) and that unless such person is arrested, his presence in the court when required cannot be secured. The Supreme Court therefore observed that before a Magistrate authorizes detention under Section 167 of the Code, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested have been safeguarded. If in his opinion, the arrest does not satisfy the requirements of Section 41 of the Code, the Magistrate is duty-bound not to authorize his further detention and release the accused after recording his own satisfaction which shall never be based on the ipse dixit of the police officer. The Supreme Court further highlighted the importance of Section 41-A of the Code which was inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (No.5 of 2009) providing that in all cases where the arrest of a person is not required as per Section 41(1) of the Code, the police officer is

required to issue notice directing the accused person to appear before him at specific place and time. If such accused complies with the terms of notice, the law further mandates that he shall not be arrested, unless the reasons are recorded by the police officer that the arrest is necessary. At this stage also the condition precedent for causing arrest, as envisaged in Section 41 of the Code, has to be complied with, which shall be subject to the same scrutiny by the Magistrate as aforesaid. The Supreme Court deprecated the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 of the Code for effecting arrest. The Supreme Court observed that it seems that police has not learnt its lesson; the lesson implicit and embodied in the Code and is persisting with its colonial approach despite six decades of independence, as the power of arrest is being used as a tool of harassment and oppression of the citizen, which is "one of the lucrative sources of police corruption". All these directions issued by the Supreme Court were intended to put a check on the arbitrary power of police in mechanically arresting a citizen accused of committing offences of rather lesser gravity, either without adequate sensitivity or with oblique motive.

9. In view of what has been noticed above, we direct the Director General of Police to immediately issue fresh direction to all the Police Stations in the State to adhere to the guidelines issued by the Supreme Court in **Arnesh Kumar (supra)** in letter and spirit. We also direct that all the Judicial Magistrates, upon the accused being produced before them by the police for authorizing further detention, shall

mandatorily examine whether or not stipulations contained in both Sections 41 and 41A of the Code, have been followed and if, for reasons to be recorded in writing, the Judicial Magistrate concerned is satisfied that mandate of both or any of those provisions, has not been complied with by the police, he/she shall refuse to authorize further detention of the accused and shall direct immediate release of the accused. Even otherwise, if any arrest has been made without adherence to the aforesaid guidelines, the accused concerned would be entitled to directly apply to the court of competent jurisdiction for his regular bail on this ground alone.

10. We direct the Registrar General of the High Court to again circulate the copy of the judgment of the Supreme Court in **Arnesh Kumar (supra)** alongwith copy of this order to all the District Judges of the State, for being served upon the Judicial Magistrates in their respective judgeships. We also require the Director of the State Judicial Academy to organize online/virtual programme, in a cluster of districts or division-wise, in batches, for sensitizing, not only the Judicial Magistrates but also the police officers, in tandem with the M.P. Police Academy. The Director of the M.P. Police Academy shall in this connection coordinate with the Director of State Judicial Academy to work out the modalities for sensitizing the police officers of the State. The Director General of Police shall also be responsible for compliance of this direction.

11. Learned Senior Counsel and learned *Amicus Curiae* also invited attention of this Court to the order passed by the Supreme Court on 03.04.2020 in ***Suo Motu Writ Petition (Civil) No.4 of 2020 (In Re Contagion of Covid 19 Virus in Children Protection Homes)*** whereby all the Juvenile Justice Boards (JJB) and Children's Courts were directed to proactively consider whether a child or children should be kept in the Child Care Institutions considering the best interest, health and safety concerns, which also included a direction that for the children alleged to be in conflict with law, residing in Observation Homes, the Juvenile Justice Boards shall consider taking steps to release them on bail, unless there are clear and valid reasons for the application of the proviso to Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "the JJ Act").

12. We direct the Member Secretary of the M.P. State Legal Services Authority, Jabalpur to require the Member Secretaries of the respective District Legal Services Authorities to move an appropriate application through their Legal Aid Counsels before the respective Juvenile Justice Boards on behalf of the children in conflict with law, for their release from Observation Homes across the State, who shall consider the application and decide the same within a period of three days from the date of its filing in the light of the observations made by the Supreme Court in the aforesaid order dated 03.04.2020 passed in ***Suo Motu Writ Petition (Civil) No.4 of 2020 (supra)***, especially, taking into consideration the proviso to Section 12 of the JJ Act.

13. Let a copy of this order be forwarded to the Director General of Police, State of M.P., Bhopal; Director General of Prisons, Bhopal; Member Secretary, M.P. State Legal Services Authority, Jabalpur; Director, M.P. State Judicial Academy, Jabalpur; Director, M.P. Police Academy, Bhopal and the Registrar General of M.P. High Court, Jabalpur for necessary action.

Matters to come up on **31.05.2021**.

(Mohammad Rafiq)
Chief Justice

(Atul Sreedharan)
Vacation Judge

S/

ARNESH KUMAR v. STATE OF BIHAR

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(2014) 8 Supreme Court Cases 273

(BEFORE CHANDRAMAULI KR. PRASAD AND P.C. GHOSE, JJ.)

a ARNESH KUMAR .. Appellant;

Versus

STATE OF BIHAR AND ANOTHER .. Respondents.

Criminal Appeal No. 1277 of 2014[†], decided on July 2, 2014

b **A. Criminal Procedure Code, 1973 — Ss. 41, 41-A and 57 — Power of police to arrest without warrant — Proper exercise of — Balance between individual liberty and societal order while exercising power of arrest — Directions issued**

c — Directions issued herein, held, shall apply to all such cases where 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 — Police officers shall not arrest the accused unnecessarily and Magistrate shall not authorise detention casually and mechanically — Failure to comply with these directions, shall, apart from rendering police officers concerned liable for departmental action, also make them liable to be punished for
d contempt of court — Authorising detention without recording reasons by Judicial Magistrate concerned shall be liable for departmental action by appropriate High Court — Copy of judgment to be forwarded to Chief Secretaries as also DGs of Police of all States and UT and Registrar General of all High Courts for ensuring compliance therewith — Police — Arrest — Penal Code, 1860 — S. 498-A — Constitution of India, Arts. 21 and 22(2)

e (Paras 11 to 13)

B. Penal Code, 1860 — S. 498-A r/w S. 4, Dowry Prohibition Act, 1961 — Exercise of power of arrest — Detailed directions issued — Held, due to the rampant misuse of these provisions, it would be prudent and wise for a police officer, that no arrest is made without reasonable satisfaction reached after some investigation as to genuineness of allegations

f — Maximum sentence provided under S. 498-A IPC is imprisonment for a term which may extend to 3 yrs and fine and under S. 4 of Dowry Prohibition Act, 2 yrs with fine — Demand of Rs 8 lakhs, a Maruti car, air conditioner, television set, etc. was allegedly made by complainant's mother-in-law and father-in-law and when this fact was brought to appellant's notice,
g he supported his mother and threatened to marry another woman — Anticipatory bail application was rejected by courts below

— S. 498-A IPC, held, was introduced with avowed object to combat the menace of harassment to a woman at the hands of her in-laws — The fact that S. 498-A IPC is a cognizable and non-bailable offence has lent it a

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[†] Arising out of SLP (Cr.) No. 9127 of 2013. From the Judgment and Order dated 8-10-2013 in Cr. M. No. 30041 of 2013 of the High Court of Patna

dubious place of pride amongst provisions that are used as weapons rather than shield by disgruntled wives — Simplest way to harass is to get the husband and his relatives arrested under this provision — In a quite number of cases, bedridden grandparents of husbands, their relatives (sisters) living abroad for decades are arrested — Thus, held, it would be prudent and wise for a police officer that no arrest is made without reasonable satisfaction reached after some investigation as to genuineness of allegation — Provisional bail granted to appellant, made absolute — Dowry Prohibition Act, 1961, S. 4 (Paras 3 to 10 and 14)

C. Police — Generally — Colonial attitude of police — Persistence of, even after 60 yrs of Independence — Deprecated (Para 5)

Allowing the appeal and issuing detailed directions on the exercise of the power of arrest, the Supreme Court

Held:

Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive. (Para 5)

No arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from the power to arrest, the police officers must be able to justify the reasons thereof. 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 and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. (Para 6)

A person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. Before arrest first the police officers should have reason to

a believe on basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC. (Para 7)

b In all cases where arrest of a person is not required under Section 41(1) CrPC, police officer is required to issue notice directing the accused to appear before him at a specified place and time. The law obliges such an accused to appear before police officer and it further mandates that if such an accused complies with terms of notice he shall not be arrested, unless for reasons to be recorded, police officer is of the opinion that the arrest is necessary. At this stage also, condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to same scrutiny by the Magistrate as aforesaid. If the provisions of Section 41 CrPC which authorises police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by police officers intentionally or unwittingly would be reversed and number of cases which come to the Court for grant of anticipatory bail will substantially reduce. Practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued. (Paras 9 and 10)

Armesh Kumar v. State of Bihar, (2014) 8 SCC 469, *confirmed*

Armesh Kumar v. State of Bihar, Criminal Misc. No. 30041 of 2013, order dated 8-10-2013 (Pat), *reversed*

d Hence, the following directions are issued:

(i) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, 1961, but also such cases where 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, is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

(ii) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii) CrPC;

f (iii) The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(iv) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

g (v) 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 Superintendent of Police of the district for the reasons to be recorded in writing;

(vi) Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing. (Para 11)

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J-D/53425/CR

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SUPREME COURT CASES

(2014) 8 SCC

Advocates who appeared in this case :

Rakesh Kumar and Kaushal Yadav, Advocates, for the Appellant;
Rudreshwar Singh, Samir Ali Khan, Ms Aparna Jha, Braj K. Mishra and Abhishek
Yadav, Advocates, for the Respondents. a

Chronological list of cases cited

on page(s)

1. (2014) 8 SCC 469, *Amesh Kumar v. State of Bihar* 282a-b, 282b
2. Criminal Misc. No. 30041 of 2013, order dated 8-10-2013 (Pat), *Amesh
Kumar v. State of Bihar (reversed)* 276d

The Judgment of the Court was delivered by b

CHANDRAMAULI KR. PRASAD, J.— The petitioner apprehends his arrest in a case under Section 498-A of the Penal Code, 1860 (hereinafter called as “IPC”) and Section 4 of the Dowry Prohibition Act, 1961. The maximum sentence provided under Section 498-A IPC is imprisonment for a term which may extend to three years and fine whereas the maximum sentence provided under Section 4 of the Dowry Prohibition Act is two years and with fine. c

2. The petitioner happens to be the husband of Respondent 2, Sweta Kiran. The marriage between them was solemnized on 1-7-2007. His attempt to secure anticipatory bail has failed¹ and hence he has knocked the door of this Court by way of this special leave petition. Leave granted. d

3. In sum and substance, allegation levelled by the wife against the appellant is that demand of rupees eight lakhs, a Maruti car, an air conditioner, television set, etc. was made by her mother-in-law and father-in-law and when this fact was brought to the appellant’s notice, he supported his mother and threatened to marry another woman. It has been alleged that she was driven out of the matrimonial home due to non-fulfilment of the demand of dowry. Denying these allegations, the appellant preferred an application for anticipatory bail which was earlier rejected by the learned Sessions Judge and thereafter by the High Court. e

4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. “Crime in India 2012 Statistics” published by the National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for the offence under Section 498-A IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 f
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¹ *Amesh Kumar v. State of Bihar*, Criminal Misc. No. 30041 of 2013, order dated 8-10-2013 (Pat)

a which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under the Penal Code. It accounts for 4.5% of total crimes committed under different sections of the Penal Code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498-A IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

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d 5. Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

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h 6. Law Commissions, Police Commissions and this Court in a large number of judgments emphasised the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from the power to arrest, the police officers must be able to justify the reasons thereof. 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 and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short "CrPC"), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest.

7. As the offence with which we are concerned in the present appeal, provides for a maximum punishment of imprisonment which may extend to seven years and fine, Section 41(1)(b) CrPC which is relevant for the purpose reads as follows: a

“41. 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) * * *

(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, namely— b

(i) * * *

(ii) the police officer is satisfied that such arrest is necessary— c

(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 to disappear or tampering with such evidence in any manner; or d

(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

(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 a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.” f

7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his g
h

presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

a 7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

b 7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC.

c 8. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57 CrPC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey:

d 8.1. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167 CrPC. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. e Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.

f 8.2. Before a Magistrate authorises detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused.

g 8.3. The Magistrate before authorising detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for h example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation

of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording his satisfaction in writing that the Magistrate will authorise the detention of the accused. a

8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny. b

9. Another provision i.e. Section 41-A CrPC aimed to avoid unnecessary arrest or threat of arrest looming large on the accused requires to be vitalised. Section 41-A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), which is relevant in the context reads as follows: c

“41-A. Notice of appearance before 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 a 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. d

(2) Where such a notice is issued to any person, it shall be the duty of that 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. e

(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.” f

The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid. g

10. We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong h

a committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued.

b **11.** Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

c **11.1.** All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

d **11.2.** All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

e **11.3.** The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

f **11.4.** The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

g **11.5.** 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 Superintendent of Police of the district for the reasons to be recorded in writing;

h **11.6.** Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where 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.

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SUPREME COURT CASES

(2014) 8 SCC

13. We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance. a

14. By order dated 31-10-2013², this Court had granted provisional bail to the appellant on certain conditions. We make this order absolute.

15. In the result, we allow this appeal, making our aforesaid order dated 31-10-2013² absolute; with the directions aforesaid. b

(2014) 8 Supreme Court Cases 282

(BEFORE S.J. MUKHOPADHAYA AND KURIAN JOSEPH, JJ.)

RAM KARAN (DEAD) THROUGH LEGAL
REPRESENTATIVE AND OTHERS

.. Appellants; c

Versus

STATE OF RAJASTHAN AND OTHERS

.. Respondents.

Civil Appeal No. 5853 of 2014[†], decided on June 30, 2014

A. Tenancy and Land Laws — Rajasthan Tenancy Act, 1955 (3 of 1955) — S. 42 proviso (as ins. by amending Act 27 of 1956) — Transfer of landholding by member of Scheduled Caste in favour of person not belonging to Scheduled Caste — Held, forbidden and unenforceable under proviso — Hence, such transfer also unlawful under S. 23 of Contract Act and agreement of such transfer void under S. 2(g) of Contract Act — Contract Act, 1872 — Ss. 23 and 2(g) — Transfer of Property Act, 1882 — Ss. 10 and 54 — Statutory bars on alienation (Paras 22, 27 and 29) d

Triveni Shyam Sharma v. Board of Revenue, AIR 1965 Raj 54, distinguished

B. Tenancy and Land Laws — Rajasthan Tenancy Act, 1955 (3 of 1955) — Ss. 175 and 42 — Limitation period for filing ejectment case — Period should be reasonable when no period is prescribed — Relevant factors for determining reasonable period — Unreasonable delay e

— Sale of landholding effected in 1962 in violation of prohibition under S. 42 — Land mutated in vendee's name in 1963 — No action taken by vendors for restoration of land in their favour — Suit for ejectment of vendees filed by Tahsildar after 31 yrs in 1993 — Application for appointment of Receiver filed in that suit, rejected by Assistant Collector by holding that vendee had been in possession and cultivating suit land for 32 yrs — Held, ejectment suit filed beyond reasonable period of limitation, hence barred by limitation and not maintainable — Practice and Procedure — Delay/Laches/Limitation — Reasonable period (Paras 34 to 39) f

² *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 469 g

[†] Arising out of SLP (C) No. 16638 of 2012. From the Judgment and Order dated 2-2-2012 in CWP No. 639 of 1996, SA No. 557 of 2002 of the High Court of Rajasthan at Jaipur h

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

SUO MOTO WRIT PETITION (CIVIL) NO. 4 OF 2020

IN THE MATTER OF :

**IN RE CONTAGION OF COVID 19 VIRUS IN CHILDREN
PROTECTION HOMES**

ORDER

1. This petition has been listed suo moto because of the COVID-19 pandemic which is sweeping the country. There are children who need care and attention and are kept in or children in conflict with law who are kept in various types of homes. There are also children who are kept in foster and kinship care. In these circumstances, it was felt that the interest of these children should be looked into. Interest of these children all of whom fall within the ambit of Juvenile Justice (Care and Protection of Children) Act, 2015 should be protected and to prevent the same, the following directions are issued.

2. As the pandemic COVID-19 is intensifying in India, it is

Validity: Important that urgent measures need to be taken on priority to prevent the spread of the virus to Child Care Institutions (CCIs). These include children in need of care and protection (CNCP), and children

Validity: Important
Date: 20.04.20
20:50:30
Reason:

in contact with the law (CiCWL) in Observation Homes. These directions also apply to children in foster and kinship care.

3. These directions have been formulated on the basis of current information and understanding of COVID-19 precautions and response. However, these are also evolving with the progress of the pandemic. State Government and nodal departments are therefore requested to keep the superintendents abreast with all relevant advisories, and circulars along with guidance issued where required. The Juvenile Justice Committees (JJC's) of every High Court shall also ensure that these directions are complied with in letter and spirit. At the same time, it will be ensured that the directions issued by the State in respect of lock-down shall not be violated. However, we hope and expect that the District authorities will give necessary permission to transfer children to their family homes or Juvenile Justice Board (JJB) or any other authority.

4. MEASURES TO BE TAKEN BY CHILD WELFARE COMMITTEES

- CWCs are directed to proactively consider steps that are to be taken in the light of COVID - 19, while conducting their inquiries/inspections and also whether a child or children should be kept in the CCI considering the best interest, health and safety concerns
- Special online sittings or video sessions may be called to consider

measures that may be taken to prevent children residing in the Children's Homes, SAAs, and Open Shelters from risk of harm arising out of COVID- 19

- Gatekeeping or preventive measures need to be considered and families counselled to ensure that institutionalization is the last resort. Focus should be on prevention of separation when possible.
- CWCs to monitor cases telephonically for children who have been sent back to their families and coordinate through the District Child Protection Committees and Foster care and Adoption Committees (SFCACs) for children in foster care.
- As far as possible, online help desks and support systems for queries to be established at the state level for children and staff in CCIs.
- It is important to consider that violence, including sexual and gender-based violence may be exacerbated in contexts of anxiety and stress produced by lockdown and fear of the disease, CWCs can monitor regularly through video conferencing, WhatsApp and telephonically to ensure prevention of all forms of violence.

5. MEASURES TO BE TAKEN BY JUVENILE JUSTICE BOARDS AND CHILDREN COURTS

Juvenile Justice Boards (JJB) and Children's Courts are directed to proactively consider steps that are to be taken in the light of COVID - 19, while conducting their inquiries/inspections. Online or video sessions can be organized.

- * The Juvenile Justice Boards/Children's Courts may consider measures to prevent children residing in Observation Homes, Special Homes and Places of Safety from risk of harm arising out of COVID- 19.

* In this regard, JJBs and Children's Courts are directed to proactively consider whether a child or children should be kept in the CCI considering the best interest, health and safety concerns. These may include:

- Children alleged to be in conflict with law, residing in Observation Homes, JJB shall consider taking steps to release all children on bail, unless there are clear and valid reasons for the application of the proviso to Section 12, JJ Act, 2015.21
- Video conferencing or online sittings can be held to prevent contact for speedy disposal of cases.
- Ensure that counselling services are provided for all children in Observation homes.

It is important to consider that violence, including sexual violence may be exacerbated in contexts of anxiety and stress produced by lockdown and fear of the disease. JJBs would need to monitor the situation in the Observation Homes on a regular basis.

6. MEASURES TO BE TAKEN BY GOVERNMENTS

All states need to recognize that COVID-19 has been declared a pandemic, which warrants urgent attention and action to pre-empt emergency and disaster situation from arising with regard to children in State care. It is directed that all State Governments shall:

1. Circulate information to all CCIs about how to deal with COVID - 19 immediately, with instructions that awareness about COVID-19 is spread in a timely and effective manner.

2. Begin preparing for a disaster/emergency situation that may arise. Work with Persons in Charge of CCIs and District Child Protection Units to plan staffing rotations or schedules to reduce in-person interaction by CCI staff, where feasible. Begin developing a system for how to organise trained volunteers who could step in to care for children, when the need arises.
3. Ensure that all government functionaries perform their duties diligently, and that strict action would be taken should there be any dereliction of duty. As per Rule 66 (1), Juvenile Justice Model Rules, 2016, any dereliction of duty, violation of rules and orders, shall be viewed seriously and strict disciplinary action shall be taken or recommended by the Person-in-charge against the erring officials.
4. Make provisions to ensure that counselling is made available, and that there are monitoring systems in place to prevent violence, abuse, and neglect, including gender-based violence, which may be exacerbated in contexts of stress produced by lockdown.
5. Ensure adequate budgetary allocation is made to meet the costs that are likely to arise for the effective management of the pandemic, and that all bottlenecks and procedural delays are effectively curbed.
6. Ensure adequate availability of good quality face masks, soap, disinfectants such as bleach, or alcohol-based disinfectants, etc.
7. Ensure availability of adequate food, drinking water, and other necessities such as clean clothes, menstrual hygiene products, etc.

7. **DIRECTIONS TO CCIs**

The Person in Charge of the CCI and all other staff working in the CCI shall proactively and diligently take all necessary steps to keep the children safe from the risk of harm arising out of COVID-19, in

furtherance of the fundamental principle of safety enshrined in the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015).

1. The Health Ministry has set up **new National Helpline on COVID-19, which are 1075 and 1800-112-545**. In case of any queries or clarifications related to Coronavirus pandemic, call on this number. In addition, **Childline 1098** continues to be operational.
2. In the case of staff or children with symptoms, call the helplines above mention and or a local doctor. Go to the hospital only if you receive such advise by doctor/helpline, or if symptoms are severe-
3. Staff or any other individual found to be exhibiting symptoms of COVID-19 should not be permitted to enter the CCI.
4. CCIs should promote social distancing. The Ministry of Health and Family Welfare, Government of India (MOHFW), has issued Guidelines on Social Distancing.
5. CCIs should enforce regular hand washing with safe water and soap, alcohol rub/hand sanitizer or chlorine solution and, at a minimum, daily disinfection and cleaning of various surfaces including the kitchen and bathrooms. Where adequate water is not available, immediate steps should be taken to ensure it is made available through necessary action, including enhancing budget allocation for the said purpose.
6. CCIs should provide appropriate water, sanitation, disinfection, and waste management facilities and follow environmental cleaning and decontamination procedures.

This information should be made available to families fostering

children under foster or kinship care schemes.

8. PREVENTIVE MEASURES FOR CCIs

In order to prevent children and staff members in CCIs from getting infected by COVID - 19, Persons in Charge of CCIs shall:

1. Know and make known how COVID -19 spreads

The best way to prevent illness is to avoid being exposed to this virus. Current understanding on the virus is that it spreads mainly from person-to-person.

- * Between a person who is infected with the virus and other people who are in close contact with that person;
- * Having face-to-face contact with a COVID-19 patient within 2 meters and for >15 minutes;
- * Through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs;
- * There is currently no vaccine to prevent COVID-19.

2. Take necessary steps to practice, promote and demonstrate positive hygiene behaviours and monitor their uptake

- * Frequent usage of hand sanitizer by guard, gardener, driver, etc. present in the residential premises/compound. Ensure that hands are cleaned and disinfected often - Clean hands at the main door and schedule regular hand washing reminders;
- * If possible, make arrangements hand sanitizers that contain at least 70% alcohol. Ensure that all surfaces of hands are covered, and they are rubbed together until they feel dry. The

Person in Charge of the CCI should make necessary arrangements to utilize emergency/contingency funds for this purpose, and submit requisition for additional budgetary allocation where required, at the earliest.

3. Practice social distancing

- * Physical distancing must be maintained. Shaking hands and hugging as a matter of greeting to be avoided. Instruct children and staff to maintain social distance by putting distance (at least 2 metres (6 feet) distance between yourself and anyone who is coughing or sneezing) between themselves and other people if COVID-19 is spreading in the community. This is especially important for people who are at higher risk of getting very sick, such as older;
- * Reduce number of people entering into CCIs;
- * Meetings shall be done through video conferences and/or rescheduled;
- * Distancing should be applying in the CCIs where children and staff members congregate such as the reading, dining and television rooms. For example, use of these spaces can be scheduled at 25% participation and the schedule developed to ensure more social distancing.

4. Cleaning and disinfecting rigorously

Current evidence suggests that COVID-19 may remain viable for hours to days on surfaces made from a variety of materials. *Cleaning* refers to the removal of dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs. But by removing the germs, it decreases their number and therefore any risk of spreading infection. *Disinfecting* works by using chemicals to kill germs on surfaces. This process does not necessarily clean dirty surfaces or remove germs. But killing germs remaining on a surface after cleaning further reduces any risk of spreading infection.

- * Clean and disinfect the CCI building, especially water and sanitation facilities at least once a day, and particularly surfaces that are touched by many people (railings, door and window handles, toys, teaching and learning aids etc.) Clean *and* disinfect frequently touched surfaces daily. This includes gates/doors, doorbells, tables, doorknobs, light switches, handles, desks, phones, toilets, water taps, wash basins, etc.;
- * Do not shake dirty laundry; this can minimize the possibility of dispersing virus through the air;
- * Wash items using the hot water and dry items completely. Dirty laundry that has been in contact with an ill person can however be washed with other people's items if washed in hot water and with adequate amounts of soap/detergent;
- * Ensure adequate, clean toilets;
- * Maintain clean and hygienic kitchen conditions;
- * Cleaning/disinfecting all couriers packages, parcels, grocery packets before bringing inside the house and sanitizing hands right after the process. Preferably wear disposable gloves;
- * For disinfection, diluted household bleach solutions, alcohol solutions with at least 70% alcohol, and most common household disinfectants should be used when possible.

9. **RESPONSIVE MEASURES FOR CCIs**

1. **Conduct regular screening:** Symptoms can include fever, cough and shortness of breath. In more severe cases, infection can

cause pneumonia or breathing difficulties. These symptoms are similar to the flu (influenza) or the common cold, which are a lot more common than COVID-19. This is why testing is required to confirm if someone has COVID-19.

2. Health referral system to be followed: The CCI should immediately follow procedures established by the Ministry/Department of Health and Family Welfare, if children or staff or other service providers working in the CCI become unwell. First step is to inform the nurse/doctor attached to the CCI at the earliest, when there is a suspicion of COVID-19 infection in any staff/child. CCIs can call the helplines referred above or a local doctor. Children or people affected should go only if such advise is given by doctor/helpline, or if symptoms are severe.–

3. Quarantine: In case of symptoms, the children the CCI should have a quarantine/segregated section (*where possible*) & make alternate arrangements where a quarantine facility is not possible.

4. Planning in advance for emergency situations. The Person in Charge of the CCI shall, in coordination with the health staff attached to the CCI, - plan ahead with the local health authorities to plan for any emergency that may arise due to the COVID-19. This shall include:

- * updating the emergency contact lists
- * separating sick children and staff from those who are well, without creating stigma;
- * for informing parents/caregivers, and consulting with health care providers/health authorities wherever possible; and
- * whether or not children/staff need to be referred directly to a health facility, depending on the situation/context, or

sent home, after obtaining the necessary orders from the concerned Child Welfare Committee or Juvenile Justice Board, or Children's Court.

- * Information about such procedures shall be shared with staff, parents and children ahead of time.

10. MEASURES FOR CHILDREN UNDER FOSTER AND KINSHIP CARE

- * Families that are fostering children should receive information about how to prevent COVID-19 as indicated above.
- * Follow up should be made on their health and psychosocial well-being status, and they should be informed of how to do in case of symptoms

11. GUIDANCE ON MEASURES TO ENSURE WELLBEING OF CHILDREN (CNCP and CiCWL)

- * **It is important to acknowledge that for children, it is natural to feel stress, anxiety, grief, and worry during an ongoing pandemic like COVID-19 disease.** They may express psychological distress (anxiety, sadness) by acting out in a different way- each child behaves differently. Some may become silent while other may feel and express anger and hyperactivity.
- * **Reassure the children that they are safe. Let them know it is okay if they feel upset.** Share with them how you deal with your own stress so that they can learn how to cope from you. Caregivers need to validate these emotions and talk to children calmly about what is happening in a way that they can understand. Keep it simple and appropriate for each child's age. Give children opportunities to talk about what they are feeling. Anxiety and stress is also borne out of lack of knowledge, rumours and misinformation. Provide right kind of

information from trusted sources in an honest, age-appropriate manner. Take time to talk with the children and to share the facts about COVID-19, - enabling them to understand the actual risk can make an outbreak less stressful.

*** Encourage children to connect with each other and to talk with people they trust, about their concerns and how they are feeling.**

*** Avoid watching, reading, listening or discussing too much news about the COVID-19 and persuade children to divert their attention to other topics as well.** Children may misinterpret what they hear and can be frightened about something they do not understand. Hearing about the pandemic repeatedly can be upsetting.

* Disruption of routine and closure of schools may be stressful for children. **Try to continue with the regular routine maintained in the home, with minimal disruptions**, so as to maintain a sense of security and wellbeing, while taking all measures to ensure the safety of the children and the staff.

*** Spend time with children and help them to unwind, preferably doing activities they enjoy.** Make it a point to have interactive activities, games etc. with children to keep them engaged in a positive way. Make sure children have enough opportunity to move around, run and do physical activities, even if they are not going to school or playing with friends outside. If schools are going to be closed for a period of time, talk to teachers to put up a list of interactive child-centric activities to keep children engaged.

*** It is important to consider that violence, including sexual and gender-based violence may be exacerbated in contexts of anxiety and stress produced by lockdown and fear of the disease. Do not use corporal punishment**

/violence to discipline children. This will add to their anxiety and stress and may have serious mental health implication. All CCI staff need to be cognizant of the fact that there is an increased risk of violence (by peers, other staff members) including sexual abuse. Ensure prevention of all forms of violence.

- * **Guide students on how to support their peers and prevent exclusion and bullying.**

- * **Work with the health staff/social workers/counsellors to identify and support children and staff who exhibit signs of distress in the CCI.** In CCIs, there may be some children who are undergoing some kind of counselling or treatment for pre-existing mental health issues. Ensure continuance of the treatment/therapy in consultation with the therapist/psychiatrist.

- * **Ensure that no staff or child is subject to any form of stigmatizing words or behaviour arising due to coughing, sneezing, etc.,** as this violates the principles of 'equality and non-discrimination,' 'dignity and worth'.

- * **Encourage and support children to take care of their bodies** - taking deep breaths, stretching, doing yoga/meditation, eating healthy, well-balanced meals, exercising regularly, getting plenty of sleep, etc.

- * **Work with social service systems to ensure continuity of critical services that may take place in CCIs,** such as health screenings, or therapies for children with special needs. Consider the specific needs of children with disabilities, and how marginalized populations may be more acutely impacted by the illness or its secondary effects.

12. The Registry of this Court is directed to immediately send a copy

of this order by e-mail to the Chief Secretary of every State/Union Territory who shall ensure that a copy of this order with a translated version in the local language is sent to all the CWCs and CCIs. A copy of this order shall also be sent by e-mail to the Registrar Generals of all the High Courts who shall in turn ensure that a copy of the same is forwarded forthwith to the Principal Magistrates presiding over the JJBs and presiding officers of the Children Courts.

13. We further direct the Registrar Generals of every High Court to place this order before the Chairperson of JJC of every High Court. We request the JJC of all the High Courts to not only ensure due compliance of this order but they shall also regularly monitor the implementation of the directions issued hereinabove as frequently as possible and at least once a week.

14. With these directions the writ petition is disposed of.

.....J.
(L. Nageswara Rao)

.....J.
(Deepak Gupta)

New Delhi
April 03, 2020.

ITEM NO.4

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SUO MOTO WRIT PETITION (CIVIL) No(s). 4/2020

IN THE MATTER OF :

IN RE CONTAGION OF COVID 19 VIRUS IN CHILDREN PROTECTION HOMES

Date : 03-04-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE DEEPAK GUPTA

For Petitioner(s)

By Courts Motion, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The Court convened through Video Conferencing.

The writ petition is disposed of in terms of the Signed Order.

(GEETA AHUJA)
COURT MASTER (SH)

(The Signed Order is placed on the file)

(ANAND PRAKASH)
BRANCH OFFICER