

CHAPTER II

ARREST OF PERSONS

Broadly speaking arrest of persons may be classified under two categories, as below:--

- (i) Arrests under warrants issued by a competent Court; AND
- (ii) Arrests otherwise than such warrants.

The several sections in Chapter V deals with arrests otherwise than under warrant, issued by a Court under this Code. Section 43, authorizes even a private person to arrest, if any person who in his view commits a non bailable and cognizable offence. But the above provisions should be used carefully and in judicious manner. So Section 50(1) requires that every Police Officer, or any other person arresting any person without warrant, to state either the particulars of the offence or the grounds for arrest forthwith. Section 70 prescribes that such warrant must be in writing signed by the Presiding Officer and bear the seal of the Court. Section 75 states that the Police Officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant. Further Article 22 of the Constitution of India, which is the supreme law of the land confers a fundamental right to every citizen of India for protection against arrest and against detention in certain cases.

Article 22(1):--No person, who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall be denied the right to consult, and to be defended by, a legal practitioner of his choice.

Article 22(2):--Every person, who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of the Magistrate.

Section 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) who has been concerned in any cognizable offence or against whom a reasonable information has been made, or credible information has been received or a reasonable suspicion exist of his having been so concerned; OR

(b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house breaking; OR

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; OR

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; OR

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; OR

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; OR

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to the extradition, or otherwise, liable to be apprehended or detained in custody in India; OR

(h) who, being a released convict, commits a breach of any rule, made under sub-section (5) of Section 356; OR

(i) for whose arrest any requisition, whether written or oral, has been received from another Police Officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the Officer who issued the requisition.

Section 41(2):—Any Officer in charge of a Police Station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of persons specified in Section 109 or 110.

The power to arrest conferred by this section on a Police Officer may be exercised even at a place beyond the limits of his station.²²

Arrest on requisition from Police of another district:—A Magistrate of one district has no jurisdiction to issue a warrant for the arrest of a person wanted in cases pending before Magistrates in other districts, and in connection with crimes committed in those districts. But the police of one district can arrest a person in that district on receiving requisition from the police of other districts for arresting him. The requisition should also show the offence or other cause for which the arrest is to be made, and also if it appeared therefrom that the person might be lawfully arrested without a warrant by the officer who issued the requisition. Such a requisition may be taken as credible information under this clause.²³

Section 44:—Arrest by Magistrate:—(1) When any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offenders and may thereupon subject to the provisions herein contained as to bail, commit the offender to custody.

(2) Any Magistrate, whether Executive or Judicial may, at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

A Magistrate directing an arrest under this section does not act as court. The person arrested under this section, must be produced before another competent Magistrate within 24 hours. The Magistrate directing arrest cannot himself pass an order of remand. Such remand/detention order passed by the same Magistrate is illegal.²⁴ Because as per Section 479, no Magistrate shall deal judicially with a case, in which he himself is interested.

Within the local limits of his jurisdiction:—The power to arrest a person can be exercised by a Magistrate only within the local limits of his jurisdiction. If he has jurisdiction in sub division A, but he holds his Court within the limits of sub division B, - he cannot exercise his power to arrest in sub division B.²⁵

Arrest, whether an administrative or judicial act:—Getting a person arrested in exercise of the power under S.44, is an executive power and not a judicial one, though the power may have been exercised during the pendency of a judicial proceeding.²⁵

Arrest and custody:—Arrest is a mode of formally taking a person into police custody. But any person may be in custody of police in many other ways. In custody denotes the restriction on the movements of the person concerned, which may be complete as, for instance in case of arrested person, or it may be partial also. Hence the

23. *Kali Charan v. State*, AIR 1955 All. 462 at 465 : 1955 Cr.L.J. 1146.

24. *Harihar Anand v. Jailor*, AIR 1954 All. 601 at 603 : 1954 ALJ 355 : 1954 Cr.L.J. 1317

25. *Sailajanand Pandey v. Suresh Chandraguptha*, AIR 1969 Pat. 194:1968 Pat.LJR 600

concept of being "in custody" cannot therefore, be equated with the concept of formal arrest.²⁷

Section 46:--Arrest how to be made:--(1) In making an arrest, the Police Officer or other person making the same, shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such Police Officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person, who is not accused of an offence punishable with death or with imprisonment for life.

Section 49:--No unnecessary restraint:--The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Under Cr.P.C. : Who may arrest:--

- (A) Police Officer may arrest without warrant U/S. 41(1) and U/S.151, under a warrant U/Ss.72 and 74; under the written order from an Officer-in-charge of a Police Station U/Ss. 55 and 157; under the orders of a Magistrate U/S. 44.
- (B) Any superior Police Officer vide Section 36.
- (C) A Magistrate (Executive or Judicial) U/S. 44.
- (D) A Military Officer U/Ss. 130 and 131.
- (E) A private person without warrant U/S. 43 and under warrant U/Ss. 72 and 73, under order of a Police Officer U/S.37 and under order of a Magistrate U/Ss. 37 and 44.²⁸

Arrest may be authorized by:--

- (A) A Police Officer U/Ss. 37 and 74.
- (B) An Officer-in-charge of Police Station U/S. 41(2).
- (C) An Executive Magistrate
 - (i) Verbally U/S. 44; or
 - (ii) by warrant U/S. 107 read with S.113.

27. Harban Singh Sardar Lana Singh v. State, AIR 1970 Bom. 79 at P.82

28. Cr.P.C. 43 for aiding persons other than police officers and Ss.66 & 67 for rearrest.

Section 50:--Person arrested to be informed of grounds of arrest and of right to bail:--
(1) Every Police Officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a Police Officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

Section 50(1):--Persons arrested has to be informed forthwith the full particulars of offences etc. and of the ground of arrest and he has right to bail as per law.

Section 57:-- Person arrested not to be detained more than 24 hours:--No Police Officer shall detain in custody of a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under Section 167, exceed 24 hours exclusive of the time necessary for the journey from place of arrest to the Magistrate's Court.

This Section does not empower a Police Officer to keep an arrested person in custody even a minute longer than is necessary for the purpose of investigation and this section deals solely with the question of period of detention by police of a person arrested WITHOUT WARRANT. Hence within 24 hours of arrest, police custody should be converted into judicial custody.

What amounts to police "custody"?:-- Police "custody" includes custody on the authority of the Police. Every person who is kept in attendance to answer a charge in such a way that he is practically deprived of his freedom, is to be considered as in custody. A Police Officer who, without himself arresting a person, directs some of the neighbours to take charge of him is responsible in the same way as if he had himself made the arrest. Requiring a person's attendance by letter and deputing a constable to accompany him with orders to prevent him from speaking to anyone amounts to an arrest.²⁹

The order of a Magistrate for indefinite detention is illegal. At the expiration of 24 hours from the time of arrest, the accused must either be discharged or be brought before a Magistrate, who can then remand U/S. [309/167] for period not exceeding 15 days. It is the duty of the Magistrate of all classes to guard the citizens against needless and illegal detentions.

Section 58:--Police to report apprehensions:--Officers-in-charge of police stations shall report to the District Magistrate, or, if he so directs, to the Sub Divisional

29. See *Paran Kusam Narasiah Pantulu v. Cap. R A C Stuart*, 2 MH C.R. 396; *Queen v. Behary Singh*. 7 W.R. 3

Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Section 59:--Discharge of person apprehended:--No person who has been arrested by a Police Officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

The object of Sections 58 and 59 is that the Magistrate should promptly exercise authority, if necessary, with regard to all arrests by the police. Failure on the part of the Police Officer to send the report under this sections may be punishable under Section 217 IPC.
