

Chapter 5

THE ROLE OF POLICE

The Precept

AMONGST INALIENABLE human rights, the enjoyment of personal liberty has a meaningful connotation only when safety is ensured to an individual against physical coercion and restraint. Only a just and reasonable procedure can seek to abridge this freedom. The reasonable procedure for this purpose will have to satisfy all such tests as are laid down in the universal instruments and the constitutional provisions.¹ When a person, who has been arrested by police on a criminal charge, moves a bail application in the court, he seeks to protect his freedom under the Constitution.²

The police is an important agency of the state to maintain law and order within the body politic. In order to carry out this function effectively, law has authorised a police officer to arrest a person under certain circumstances. It also provides for the grant of bail by a police officer to such a person who has been arrested under a warrant issued by the court; or even when an arrest has been without a warrant.³ Several special Acts also empower police officers to arrest suspected offenders and to grant them bail.⁴ The purpose in granting bail to an accused is conditioned to secure his attendance before a judicial authority for prosecuting the matter further.

Meaning of Arrest

Arrest signifies the apprehension or detention of a person so that he may be forthcoming to answer an alleged or supposed charge or crime.⁵ The law relating to arrest is mainly based on the English law. Under English law an arrest consists of actual seizure or touching of a person's body with a view to detaining him in custody. However, a mere pronouncing of the words of arrest may not be sufficient to put him under arrest unless the person sought to be arrested submits to the process and agrees to go with the arresting officer.⁶

To constitute arrest the accused may not have been forcibly detained or imprisoned. It is being generally understood that an arrest takes place only by touch of body, but a correct view would be that if a person submits to the command and control of the police officer, he is deemed to be under arrest. A police custody commences no sooner a man submits himself

1. See, *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.
2. *Rattan Singh v. State of MP*, AIR 1959 MP 216.
3. See Ss. 46-48, Code of Criminal Procedure, 1973.
4. See Appendix, III, *infra*.
5. *Corpus Juris Secundum* 570.
6. *Halsbury's Laws of England* 342 (3rd ed.).

to it.⁷ When the accused may be constrained by a threat, or be restrained by the words of implication an arrest is complete. For example, where a police officer orders one to stop, and the person so ordered obeys the command then he is under an arrest.⁸

Under the Code the mode of arrest is defined by section 46 as follows :

Section 46. Arrest how 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.

Thus, when an investigating police officer stops an accused on the street for interrogation and if his command to stop is obeyed, this constitutes a valid arrest. However, a mere threat to arrest, which is not accomplished by an overt act on the part of the police officer, does not constitute an arrest.

It may be noted that the elements of arrest are : a purpose or intention to effect an arrest under a real or pretended authority, the actual or constructive seizure or detention of the person to be arrested by a person having power to control him, a communication by an arresting officer to the person whose arrest is sought along with an intention or purpose to effect arrest then and there, as well as understanding by the person whose arrest is sought that it is the intention of the arresting officer to arrest and detain him. Any act which indicates an intention to take him into custody and subjects the person arrested to actual control and will of the person making an arrest is important.

Arrestees' Rights and Checks on Police

Anyone who is being arrested has a right to ask the officer arresting him to indicate what power he has to arrest him. If arrest is made under a warrant, the man who is being arrested is entitled to ask that warrant be shown to him. He has to get himself satisfied that he is being properly arrested. In *re Appaswamy Mudaliar & Ors.*⁹ it has been held that when a

7. *Harmohan Lal v. Emperor*, 30 Cr. LJ 128; *U Thwe v. A. Kim Fee*, AIR 1930 Rangoon 131.

8. See generally, Ss. 46, 48 and 151, Cr.PC 1973.

9. ILR 47 Mad. 442 (1924).

warrant is not shown to the person and an arrest is made, the arrest becomes illegal. The person being arrested is entitled to know, the source of authority of the constable or the policeman arresting him and if the constable states a certain power which the man knows he has not got, the arrestee is entitled to object to such an arrest and can refuse to surrender to custody.¹⁰ He can even escape from the custody if he has been arrested. In effecting an arrest, the police officer is empowered to use all necessary means, but cannot use a restraint which is more than necessary to prevent escape.¹¹

The code gives very wide powers to an investigating officer in cognizable offences to make arrest.¹² The only limitation is that there should be reasonable and credible information with regard to the offence and the offender in order to prevent any misuse of power. A reasonable information or suspicion has to depend upon circumstances of each case. The same has to be founded on some definite fact or some tangible proof which may sufficiently establish in the mind of a police officer the reasonableness or credibility of the charge, information or suspicion. The law thus requires the use of great discretion, caution and circumspection while exercising the wide police powers conferred upon a police officer in this regard. If a police officer suspects that a person is involved in a particular crime, he should keep his suspicions secret and if possible, defer the arrest until investigations tend to show his complicity in an alleged crime. It will otherwise be an unnecessary interference with the liberty of the person. But if it is found necessary to interfere with the liberty of the person in order to prevent him from absconding, the police officer can invoke his powers to make an arrest with only so much of restraint as may be necessary.¹³

Since the decision of *Rampriti Ahir's* case,¹⁴ it has been the rule that detention and arrest of members of the public are not matters of caprice. These are to be governed by law and must be conducted upon certain rules and principles which the law clearly lays down. To arrest a person without any justification is one of the most serious encroachments upon the liberty of the person which can well be contemplated. The judicial decisions are to the effect that if an arrest is found *mala fide*, the police officer who makes an arrest is personally liable for the damages.¹⁵

10. See *State of UP v. Deoman*, AIR 1960 SC 1125; *Santokhi Beldar v. Emperor*, 34 Cr. LJ 349, 351 (1983).

11. See s. 49, Cr.PC 1973.

12. See s. 41(1), Cr.PC 1973.

13. *Supra* note 11.

14. *Rampriti Ahir v. King Emperor*, AIR 1926 Pat. 560.

15. See *Ramaswamy Iyer, The Law of Torts* 48 esp. f.n. 829. See also s. 359, Cr.PC, 1973.

Bail by Police

The police is not only empowered to arrest a person on reasonable and credible evidence, but also empowered to release an arrested person on bail.¹⁶ In *Morit Malhotra v. State of Rajasthan*,¹⁷ the accused was granted bail under section 436 by the police. But when he appeared before the court he was advised to take bail from the court. He challenged the orders in the Rajasthan High Court which ruled that it is not necessary for an accused to get bail granted by the court if he has already been granted bail by the police. The court drew support from the reasoning in the Supreme Court decision in *Free Legal Aid Committee, Jamshedpur v. State of Bihar*¹⁸ wherein it was ruled that in a sessions case if the magistrate has granted bail, the accused need not seek bail from the court of sessions.

Having regard to the nature of the relationship of the person on bond with the court and the powers conferred on the court under section 436, it appears that the above ruling may not be generally followed by the courts.

An interesting question arose in *Haji Mohamed Wasim v. State of U.P.*¹⁹ before the Allahabad High Court as to the validity of bail granted by police officers. In this case the accused who was on bail granted by police preferred not to appear before the court. The trial court issued a non-bailable warrant which came to be challenged by the accused under section 482. The court ruled that he has to take fresh bail from trial court. It reasoned :

[T]he power of a police officer in-charge of a police station to grant bail and the bail granted by him comes to an end with the conclusion of the investigation except in cases where the sufficient evidence is only that of a bailable offence, in which eventuality he can take security for appearance of the accused before the magistrate on a day fixed or from day to day until otherwise directed. No parity can be claimed with an order passed by magistrate in view of enabling provision contained in clause (b) of section 209... under which the committal Magistrate has been empowered to grant bail until conclusion of trial, which power was otherwise restricted to grant of bail by him during pendency of committal proceedings under clause (a) of section 209.²⁰

16. See ss, 43, 44(1), 50, 59, 169, 436 and 437, Cr.PC, 1973.

17. 1991 Cr.LJ 806 (Raj.).

18. AIR 1982 SC 1463.

19. 1992 Cr.LJ 1299.

20. *Id.* at 1302; see also *Morit Malhotra v. State of Rajasthan* 1991 Cr. L J 806.

The real situation, as it obtains today in the society, is amply clear that police discretion is not always being properly exercised in the matter of arrest. The citizens are being deprived of their liberty and the police has become a kind of terror for the citizens because of their undue harshness with the public in general and the suspects in particular. The newspapers are replete with examples of police high-handedness. It is a matter of common knowledge that in order to extract information from a suspect, the police beat a person in the course of investigation, in custody to the extent that sometime an accused person even succumbs to injuries. On many occasions departmental inquiries have been conducted; but these have been used mainly to cover up the taint. Furthermore, instances are known where in order to secure conviction of an accused, the police has concocted the whole prosecution story and have tutored the witnesses to implicate innocent persons. Such police activities once led a high court judge to form an opinion that police is itself an organization of goondas,²¹ although the remarks were expunged later by the Supreme Court. Even then an echo of these remarks continues to be heard till today.

Police Role in Human Rights Regime

The new human rights regime seeks to confer upon the police a newer role to play. A democratic state like India has to be more responsive to this obligation. In an address to the trainees at the Central Police Training College, Mount Abu, in October 1958, the then Prime Minister of India, Pandit Nehru remarked that the "police cannot function without the closest co-operation of the public" and proceeded to observe that, "the police have functions today which are different from those in a non-democratic state. The police has to secure full co-operation of the public in their task of maintaining law and order. Their efficiency would depend on the extent of co-operation they succeed in getting from the public and that it can help a great deal in the detection of crime."²² It may be pointed out that with a changed police attitude the spree of crime and anti-social activities may continue to show an upward trend but the police alone cannot be held responsible for it. The police is not expected to assign to itself the role of a mentor and assume for itself the absolute responsibility to correct the distortions in the society. The remedies for these ailments lie elsewhere.

Perversions can be better prevented by adhering to the concept of rule of law rather than the police to act on their self-imposed and overzealous responsibilities aimed at setting right everything in the society in their own manner. It has been an established principle in the United Kingdom that the duty of prosecution is not to secure a conviction. It has a

21. *Amin v. State*, AIR 1958 All. 293.

22. Speech made by Pt. Jawahar Lal Nehru at Central Police Training College, Mt. Abu (Raj.) October 1958.

duty to place fairly the relevant evidence before the court.²³ This principle is worth following in any system which claims to have a democratic set-up where the rule of law is given supremacy. One may find himself in accord with the views of a distinguished jurist, Sir John Latham, the late Chief Justice of Australia when he said, "it is not the English view of law that whatever is officially done is law. On the contrary, the principle of English law is what is done officially must be done in accordance with law".²⁴

The Criminal Procedure Code has vested the police with such powers as are necessary for the apprehension of an accused and also for investigation of the crime. However, the basic object of investigatory police powers is misconstrued in police parlance to be a power to secure conviction. This has consequently led the law enforcement agencies to adopt ways and means which not only transcend the bounds of legality but are also socially reprehensible and humanly callous in nature. All these run counter to civilised norms and the precept of the rule of law in a civilised order.

The system of criminal justice on the whole can sustain itself if the interaction in the police milieu can assure that the enforcement practices would follow the law and not *vice versa*. The responses to the prevailing democratic values in the society and also to the precept of rule of law have been attempted through an empirical study detailed in the following chapter.²⁵

23. R.F.V. Heuston, *Essays in Constitutional Law* 41 (1964).

24. *Id.* at 31.

25. See *Chapter 6* below.