

## CHAPTER 12

# ARRESTS, CUSTODY, BAIL & REMAND

## ARRESTS

### Power of Arrest

**12.1** The Police Officers of Delhi Special Police Establishment may arrest an individual, concerned in any cognizable offence notified under Section 3 of the DSPE Act or against whom a reasonable suspicion exists of his having been involved in the crime, without any warrant of arrest issued by a competent Court. This power is derived from Section 41 of the Code of Criminal Procedure (Cr.P.C). The Officer/s of DSPE may take assistance of the local Police while making arrest, whenever considered necessary. If any woman is to be arrested, she may be arrested between sunrise and sunset and with the assistance of woman Police Officer, as far as possible. In case of non-availability of women Police Officer, a woman relation/ acquaintance could be allowed to remain present until she is released on bail or produced before the competent Court.

**12.2** The Police Officers of Delhi Special Police Establishment may arrest an individual against whom a warrant of arrest has been issued by a Court and endorsed to him for execution. No discretion is available to Police Officer(s) in executing the warrants of arrest issued by a Court. In case, the individual against whom a warrant of arrest has been issued by a Court cannot be arrested within the time specified in the warrant, a fresh warrant may be obtained after returning the unexecuted one. In cases of individuals to whom it may be advisable to deny use of passport facility, arrest warrants shall normally be obtained to invoke the provisions of Sections 6 and 10 of the Passports Act, 1967.

**12.3** *However, as arrest takes away liberty of an individual, the power to arrest vested under Section 41 Cr.P.C. must be exercised with due care and caution. The power being discretionary must be used with due care to ensure that the human rights of any individual are not violated under any circumstances. The arrest may be made only when it is reasonably felt that the individual so arrested is involved in the commission of a heinous crime and will be prosecuted in the Court of Law for the offences committed by him and if it is feared that he is likely to tamper with or destroy evidence or is likely to evade the process of law. The Police Officers of DSPE must observe guidelines issued in this regard from time to time. The Superintendents of Police must satisfy himself, before Officers working under his control effect an arrest, by evaluating the evidence available against an individual, and need to affect the arrest. If the case has been registered with the approval of regional office or the Head Office, necessary permission may be obtained from the Competent Authority by sending an arrest proposal to the said authority through the DIG concerned. In respect of public servants, the instructions given in the paragraph below may be observed. Undue publicity for arrests made must be avoided.*

### Arrest of Public Servants in CBI Cases

**12.4** Public servants should be placed under arrest only when it becomes necessary to do so in the interest of investigation or to satisfy the requirements of law or to prevent the accused from absconding or after a decision has been taken to launch a prosecution and necessary sanction for it has been obtained. Investigating Officers should, wherever possible, obtain the concurrence of the Superintendent of Police before making such arrests. A Superintendent of Police and Investigating Officers should use utmost care and discretion in deciding to arrest and in making such arrest. Undue publicity and embarrassment must be avoided.

**12.5** In affecting the arrest of a public servant, especially on operational duty, proper steps should be taken to see that the work of the Department is not unnecessarily dislocated. As far as

possible, timely information of intention to arrest the public servant may be conveyed to the authority, to which such public servant is subordinate so that suitable alternative administrative arrangements could be made. In case, the arrest cannot be postponed for any exceptional reason and his immediate superior cannot be informed in advance, he should be informed soon after making arrest of the public servant. A report will be sent to the Head Office detailing the reasons for effecting arrest without giving prior information to the immediate superior Officer of the public servant concerned.

**12.6** The arrest of personnel of armed forces should be intimated to the nearest Commanding Officer and his/her parent unit.

### **Arrest how made**

**12.7** As provided in Section 46 Cr.P.C., in making an arrest the Police Officer shall actually touch or confine the body of the person to be arrested, unless there is submission to the custody by word or action. If any person forcibly resists the endeavour to arrest him or attempts to evade the arrest, all means necessary, including **reasonable force** may be used. It must be remembered while using reasonable force that the law does not give a right to the Police Officer to cause death of a person who is not accused of an offence punishable with death or with imprisonment for life. The use of handcuffs should be avoided as far as possible. In case, it is felt otherwise due to any reason, the handcuffs may be used only in accordance with law mandated by the Hon'ble Supreme Court in *Prem Shanker Shukla v. Delhi Administration* (1980 3 SCC 526) and *Citizen for Democracy v. State of Assam* (1995 3 SCC 743).

### **Person arrested to be informed of Grounds of Arrest and of the Right to Bail**

**12.8** Every Police Officer 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. If it is a bailable offence, the person arrested should be informed that he is entitled to be released on bail and that he may arrange sureties on his behalf (Section 50 Cr.P.C.). The individual may be informed that he has a right to consult a legal practitioner of his choice. The individual may also be told that he can have his medical examination done and if he requests to be examined by a Doctor, the same be attended to as per Section 54 Cr.P.C.

**12.9** The Hon'ble Supreme Court in *D.K. Basu v. The State of West Bengal* (AIR 1997, S.C. 610) has given directions to be followed scrupulously after the arrest of an accused person. Failure to comply with the said directions shall render the concerned Police Officer liable for Departmental action and he will also be liable to be punished for contempt of Court. All DSPE Officers arresting an accused must therefore, follow these guidelines. The directions of the Supreme Court are as follows:

- (a) The Police Personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such Police Personnel who handle interrogation of the arrestee must be recorded in a register.
- (b) The Police Officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
- (c) A person who has been arrested or detained and is being held in custody in a Police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

- (d) The time, place of arrest and venue of custody of an arrestee must be notified by the Police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the Police Station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- (e) The person arrested must be made aware of list of rights to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- (f) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the Police officials in whose custody the arrestee is.
- (g) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the Police Officer affecting the arrest and its copy provided to the arrestee.
- (h) The arrestee should be subjected to medical examination by every 48 hours during his detention in custody by a doctor on the panel of approved Doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.
- (i) Copies of all the documents, including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.
- (j) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- (k) A Police control room should be provided at all District and State Headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the Officer causing the arrest, within 12 hours of effecting the arrest and at the Police control room it should be displayed on a conspicuous notice board.

### **Arrest Report**

**12.10** An arrest report showing the time, date and place of arrest as well as the FIR number with sections of law shall be prepared at the time of arrest by the Investigating Officer as required under section 57 Cr.P.C. and sent to the Magistrate. At least one witness who may either be a member of the family of the arrestee or a respectable resident of the locality may countersign the arrest report. The arrestee shall also countersign it.

### **Search of the Persons under Arrest**

**12.11** The body of all persons arrested by the Officers of DSPE and not admitted to bail shall be thoroughly searched at the earliest. In such cases, the Officer making the arrest shall invariably prepare a search memorandum. This memorandum shall contain details not only of the property seized from the accused but also details of injuries, if any, found on the person of the accused at the time of his arrest. It is advisable, though legally not required, to keep at least one witness while conducting the personal search. In cases, where the property expected to be seized from the person of the accused is itself the main case property, such as trap cases, narcotics cases etc., the search of the person of accused shall be made in the presence of two independent witnesses. In the case of women accused, search shall be conducted by a woman only and shall, in all cases, be conducted with due regard to decency. Some Special Acts like Narcotic Drugs and Psychotropic Substances Act (NDPS Act) etc. contains special provisions for search, which should be strictly followed.

**12.12** When a person is arrested on a charge of committing an offence of such a nature and under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, he may be subjected to

medical examination to ascertain such evidence. The Officer may use such force as is reasonably necessary for that purpose, as per Section 53 Cr.P.C.

### **Procedure when Police Officer deposes Subordinate to arrest without Warrant (Section 55 Cr.P.C.)**

**12.13** When the Officer conducting an investigation requires any Officer subordinate to him to arrest any person without a warrant (otherwise than in his presence), he shall deliver to the said an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made. The Officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order. Nothing, however, affects the power of a Police Officer to arrest a person under Section 41 Cr.P.C.

### **CUSTODY OF ARRESTED PERSONS**

**12.14** If an arrested accused is not released on bail, he should be produced before the Magistrate having jurisdiction over the case in accordance with the provisions of law, at the earliest and in any case within 24 hours (excluding the journey time) as per Section 57 Cr.P.C. and get remanded to Police/judicial custody. In cases, where it is not possible to produce the accused before the Magistrate before the fall of night and it becomes necessary for the DSPE Officers to retain the accused in Police custody, he may be lodged in the Branch/ Unit lock-up or in the lock-up of the nearest local Police Station. The SP should have a working arrangement with the local Police authorities for using their lock-up facilities. In case the lock-up of the local Police Station is utilized for lodging an arrested accused or the accused who has been remanded to Police custody, at least one Officer of the Branch must be on duty as long as the individual is detained there. In the case of women accused, as far as possible a woman constable should be detailed to guard her in the woman lock-up.

### **Illness of Person under Arrest**

**12.15** When a person in Police custody is suffering from illness or injury at the time of arrest, or becomes ill or sustains injury while in such custody, such a person shall be subjected to medical examination at the earliest opportunity and proper treatment be given to him/her. A record of such treatment should be made in the General Diary of the place where the accused is so confined.

### **Production of Person arrested or Execution of Warrant of Arrest**

**12.16** When the accused is arrested on execution of a warrant of arrest in the jurisdiction of the Court issuing the warrant, he should be produced in the said Court at the earliest and in any case within twenty four (24) hours.

*12.17 Whenever a person is arrested and it appears that the investigation as regards his involvement cannot be completed within the period of twenty-four hours provided in Section 57 of Cr.P.C., the Investigating Officer should produce him before the Magistrate with an application for Police custody remand as per the provisions of Section 167 Cr.P.C. The Magistrate may authorize detention of the accused in such custody for a term not exceeding 15 days and thereafter send the accused to judicial custody as per section 167 Cr.P.C. The Investigating Officer may seek Police custody of the accused, more than once within the first 15 days after his/her arrest, if deemed fit and necessary.*

### **Warrant directed to Police Officer for Execution outside Jurisdiction (Section 79 Cr.P.C.)**

**12.18** When a warrant directed to a Police Officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a Police Officer, not below the rank of an Officer-in-charge of a Police Station, within the local limits of whose jurisdiction the warrant is to be executed. The local Police shall, if so required, assist him in executing the said warrant.

## **Procedure on Arrest of Person against whom Warrant is issued**

**12.19** When the warrant is executed outside the district in which it was issued and if the Court issuing the warrant is beyond 30 Km from the place of execution of the warrant of arrest, the arrested accused should be produced before the Executive Magistrate or District Superintendent of Police or Commissioner of Police in whose jurisdiction the warrant was executed, as per the procedure laid down under Section 80 Cr.P.C. Order should be obtained from the said Executive Magistrate or District Superintendent of Police or Commissioner of Police for production of the arrested accused before the Court, which had issued the Warrant of Arrest.

## **Arrests of Members of Parliament and Legislatures**

**12.20** When a Member of Parliament/ Legislature is arrested on a charge of involvement in a criminal offence, the Superintendent of Police of the Branch making the arrest shall intimate the DIG and the Head Office regarding the same by wireless/e-mail/Fax and also immediately intimate the same to the Speaker of the Lok Sabha/Legislature or the Chairman of the Rajya Sabha, as the case may be, indicating the reasons for arrest of the said member and the place of detention or imprisonment in the form prescribed in the Third Schedule of the book titled "**Rules of Procedure and Conduct of Business for Lok Sabha**". Similar intimation shall be given to the Presiding Officers of State Legislature in case of arrest of members of those Legislatures. Where intimation of arrest or detention is sent by wireless or e-mail or telegram, the information on all the points mentioned in the form should be given succinctly and clearly. Information whether an arrested Member has been released on bail pending investigation or trial should also be given to the concerned authorities.

**12.21** Two copies of the report sent to the Speaker, Lok Sabha, or the Chairman, Rajya Sabha, in the cases relating to the Members of Parliament should be sent to the Regional DIG as well as the Head Office along with two copies of the note giving the brief facts and particulars of the case. In respect of the cases involving MLAs and MLCs copies of the report and one copy of note giving the facts of the case should be sent to the Presiding Officer of the Legislature and Regional DIG and two copies to the Head Office for further necessary action.

**12.22** No arrest shall be made within the precincts of the House without obtaining permission of the Speaker. Similarly, no legal process, civil or criminal, shall be served within the precincts of the House without obtaining permission of the Speaker.

## **Bail**

**12.23** When an arrested person, accused of a bailable offence, can provide bail, it shall be accepted and he shall be released from custody.

**12.24** When a person accused of a non-bailable offence is arrested or detained without warrant, he may be released on bail if the release on bail is not likely to prejudice the investigation or is not likely to result in the person absconding, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life.

**12.25** A person accused of a non-bailable offence shall be released on bail under Section 437(2) Cr.P.C., 1973 at any stage of investigation when it appears that there are no reasonable grounds for believing that a non-bailable offence has been committed by him, although grounds may exist for further investigation.

**12.26** Generally, all arrested persons should be released on bail if permitted under the law and if adequate bail is furnished unless there are strong reasons to the contrary. Arrest and release or non-release of a person on bail should be mentioned in the Case Diary with grounds for the same.

**12.27** No Police Officer has powers to re-arrest an accused person in the same case, who has been released on bail under Section 437 Cr.P.C., 1973. When re-arrest is deemed necessary, an application should be made to the competent Court for the cancellation of the bail bond and issue of a warrant of arrest in accordance with the provisions of Section 437(5) Cr.P.C.

### **Arrest and Extradition of Persons in Foreign Countries**

**12.28** Should an occasion arise in which it is considered desirable to effect arrest and arrange extradition/deportation of an accused in a foreign country, a detailed report should be sent to the Head Office containing full reasons for the proposed action. The Head Office would then take necessary steps to move the Ministry of External Affairs for extradition of the accused if there are arrangements for extradition/ deportation with that country in respect of the particular offence or offences alleged to have been committed by the him/her.

### **Identification of Offenders**

**12.29** Where it is necessary to get arrested suspects identified by witnesses who claim to be able to identify them, an identification parade shall be held to confront such arrested persons with such witnesses. The following instructions should be strictly observed while holding such identification parades :

- (a) The face of the accused should be covered immediately upon his arrest and a note to this effect may be made in the Arrest Memo, Case Diary and the Remand Application. The accused should also be instructed to keep his face covered as he may be subjected to Test Identification (TI) Parade. Ordinarily, when the accused is to be put on TI Parade, he may be sent to judicial custody and immediately an application may be submitted to the Court for holding TI Parade so that the accused may be taken in Police custody remand subsequently within the first 15 days of arrest, if necessary.
- (b) The proceedings shall be conducted in the presence of a Magistrate.
- (c) Arrangements shall be made to ensure that the identifying witnesses are kept separate from each other and at such a distance from the place of identification as shall render it impossible for them to see the suspects or any of the persons concerned in the proceedings until they are called upon to make the identification.
- (d) Identification shall be carried out as soon as possible after the arrest of the suspects.
- (e) The suspects shall be placed among other persons similarly dressed and of the same social strata in the proportion of 8 or 9 such persons to 1 suspect. The suspect will be allowed to take any position in the parade, which he chooses and may be allowed to change his place if so desired after identification by each witness. Each witness shall then be brought out separately to make the identification. Care should be taken to see that the remaining witnesses are still kept out of sight and hearing and that no opportunity is permitted for any communication to pass between the witnesses who have been called up and those who have not been called up for identifying the suspects.
- (f) The results of the test shall be recorded by the Magistrate or the persons holding the identification parade as each witness views the suspects. On conclusion, the Magistrate or the person holding the identification parade shall be requested to sign the form and certify that the test has been carried out correctly and that no collusion between the Police and witnesses or among the witnesses themselves was possible. It is advisable that whenever possible an independent and reliable person not connected with the Police should be present throughout the proceedings at the place where the witnesses are kept and should be required to devote his attention entirely to the prevention of collusion. Once the arrangements for proceedings have been made, the Officer investigating the case and any Police Officer assisting him in that

investigation should have no access whatsoever either to the suspects or the witnesses.

- (g) Formal identification proceedings should not ordinarily be arranged without approval of the Superintendent of Police.
- (h) It is not the duty of the Officers conducting the test to record statements or cross-examine the suspects or witnesses. They should, however, be requested to question the identifying witnesses as to the circumstances in which they saw the suspects whom they claim to identify and to record the answers correctly. While every precaution shall be taken to prevent collusion, the identifying witnesses must be given a fair chance and unnecessary conditions must not be imposed upon these to make it impossible for a witness to identify the suspect even if he is honestly capable of making identifying the suspect in normal circumstances.

**12.30** In case the accused is absconding, a TI Parade can be held on the basis of his photograph. It has been held by the Supreme Court that identification of the accused by seeing photograph is admissible and such identification can take the place of test identification. Therefore, when a photograph is the basis of test identification it must be a good photograph or a set of good photographs. All the photographs should be of same size and colour.

### **Absconding Offenders**

**12.31** If during the course of investigation of a case sufficient evidence justifying the arrest of an accused is collected but the accused is found evading arrest, a warrant of arrest should be obtained immediately and the Investigating Officer should make all possible efforts to trace the whereabouts of the accused. The Hon'ble Supreme Court in *State of Maharashtra v. Dawood Ibrahim Kaskar and others* reported in 1997(2) Crimes 92 (SC) has held that a warrant of arrest can be issued by the Court against a person, who is accused of a non-bailable offence and is evading arrest. Enquiries should be made from his relatives, friends and other persons who are likely to be aware of his movements and they should all be warned against harbouring him

### **Issue of Proclamation**

**12.32** If the accused continues to evade arrest and the warrant cannot be executed, the Police Officer entrusted with the execution of the warrant should be produced before the Magistrate to give evidence to the effect that the warrant could not be executed. The Magistrate should then be requested to issue proclamation under section 82 Cr.P.C. and attachment of property order under section 83 Cr.P.C. Proceedings Under Section 82-83 Cr.P.C. should then be completed expeditiously.

### **Issue of Red Corner Notice etc.**

**12.33** In case the accused is suspected to be abroad, a Red Corner Notice may be got issued from Interpol (IPSG Lyons) against him. For getting the Red Corner Notice issued, the prescribed proforma may be obtained from Interpol Wing of CBI and it may be forwarded to Interpol Wing, duly filled in, along with an attested copy of warrant of arrest, with English translation, photograph and finger prints of the accused, if available. The Interpol Wing will forward the proforma to IPSG and after the Red Corner Notice is issued, a copy will be sent by Interpol Wing to the Branch on whose request it was got issued.

**12.34** In case it is suspected that the absconding accused may flee the country, Lookout Notices/Circulars may be got issued through the Deputy Director (Coordination), CBI, New Delhi. Request for Lookout Notices should be sent only after obtaining approval of the Joint Director concerned. The necessity for continuing the Lookout Notice should be reviewed every six months. Further, Ministry of External Affairs, New Delhi may also be requested not to provide passport facilities to the absconding accused and also for revocation of the Passport, if already issued, as

provided under Sections 6 and 10 of the Passports Act, 1967. Deputy Director, Coordination, CBI, New Delhi has been appointed the nodal Officer for such matters in the CBI.

### **Recording of Evidence under Section 299 Cr.P.C.**

**12.35** In all cases in which an accused is absconding, except those of exceedingly trivial or petty nature or when special circumstances exist which make the procedure unnecessary or undesirable, the Court should be requested to record evidence against the absconded offender under Section 299 Cr.P.C.

**12.36** In order to render evidence recorded under Section 299 Cr. P.C. admissible at future trial, it must be proved and put on record that the offender has absconded and that there is no immediate prospect of arresting him.

**12.37** In cases where some of the accused are absconding and some are facing trial in the Court the evidence should first be produced to prove that these persons are absconding and that there was no immediate prospect of arresting them. The evidence of the witnesses should thereafter be recorded in the case against those present. Such evidence would be relevant against the absconders under section 299 Cr. P.C.

### **Publicity regarding Absconded Offenders**

**12.38** A descriptive roll, marks of identification and, if possible, a photograph of the absconded offender should be maintained by the Branch in a dossier and wide publicity given to seek public cooperation in the arrest of the absconder. Documents should also be sent to the C.I.D/local Police Station of the State concerned for publication in their Gazette. Policy Division orders/instructions regarding POs/absconders and Fugitives should be complied with meticulously. The Fugitive Investigation Support Unit (FISU) under Assistant Director, (Coordination), CBI, New Delhi should be kept informed and their instructions complied.

### **Rewards for Apprehension of Proclaimed Offenders/Absconders**

**12.39** *In suitable cases, the Superintendent of Police should submit recommendations for rewards for apprehension of the absconded offenders to the Head Office for sanction and if the Head Office sanctions the reward, it should be given wide publicity.*

### **Dossier sub module of CRIMES /Registers of Absconded Offenders**

**12.40** The names of all absconding accused shall be entered in Dossier sub-module of CRIMES Module and/or in a register of absconders, which should be maintained in each Branch. It should be ensured that the relevant particulars are entered in the said records so that adequate steps are taken for arresting them. The records shall be maintained in each Branch for each of the following categories:—

- (a) Proclaimed offenders/absconders involved in cases registered in the Branch.
- (b) Proclaimed offenders/absconders wanted in cases of other branches of CBI, who are residents of places within the jurisdiction of the Branch and are likely to visit their home districts.

### **Retention of Records in cases against Absconders**

**12.41** All documents of the cases in which the accused persons or any one of them is absconding, the case file and the seized property should be carefully preserved so that these may be available when the accused is arrested. Such documents, files and property will not be destroyed for a period of 30 years from the date of proclamation of absconders.

## **Periodical Enquiries**

**12.42** Periodical enquiries should be made about all the proclaimed offenders and efforts made for their arrest, by forming special teams whenever necessary. The results of such enquiries and efforts to apprehend them should be mentioned in the Dossier Module or the register kept in the branches. Instructions issued by Policy Division and Fugitive Investigation Support Unit in this regard should be complied with meticulously.

## **Removal of Names from Dossier Sub-Module/Registers**

**12.43** A Superintendent of Police incharge of a Branch may remove of the name of proclaimed offender/ absconders from the register on the occurrence of any of the following contingencies:-

- (i) Arrest of the accused;
  - (ii) Death of the proclaimed offender or expiry of 30 years from the date of proclamation;
  - (iii) Any other good and sufficient reason, e.g., trifling nature of the case or lack of sufficient evidence for a successful prosecution or withdrawal of the case etc.
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