purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye-witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after-thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the Courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174, Cr.P.C., is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8."

Neither the trial Court nor the High Court has appreciated the aforesaid circumstances which go to the root of the matter and raise sufficient doubt about the involvements of the appellants in the present case.

23. We are, therefore, of the opinion that the appellants are entitled to the benefit of doubt and the case against them is not proved beyond reasonable doubt so as to uphold their conviction into a serious charge of murder under Section 302 read with Section 34 of IPC.

24. The appeal is, accordingly, allowed and the conviction of the appellants under the aforesaid provisions is set aside. The appellants, who are in custody, shall be released forthwith, if not required in any other case.

Appeal allowed.

V (2014) SLT 582

SUPREME COURT OF INDIA

Chandramauli Kr. Prasad & Pinaki Chandra Ghose, JJ.

ARNESH KUMAR —Appellant

versus

STATE OF BIHAR & ANR. —Respondents

Crl. Appeal No. 1277 of 2014—Decided on 2.7.2014

(i) Indian Penal Code, 1860 — Section 498A — Dowry Prohibition Act, 1961 — Section 4 — Criminal Procedure Code, 1973 — Section 41 — Arrest by police officer

without warrant — Cruelty — Dowry demand — Allegations against husband, father-in-law and mother-in-law — The fact that Section 498A is cognizable and non-bailable offence has lent it a dubious place of pride amongst provisions that are used as weapons rather than shield by disgruntled wife — Arrest brings humiliation, curtails freedom and cast scars forever — No arrest should be made only because offence is non-bailable and cognizable — Police officer has to be satisfied that arrest is necessary for one or more purposes envisaged by Sub-clauses (a) to (e) of Clause (1) of Section 41 of Cr.P.C. — Police Officers do not arrest accused unnecessarily and Magistrates do not authorise detention casually and mechanically — All State Governments directed to instruct its police officers not to automatically arrest when case under Section 498A of IPC is registered but to satisfy themselves about necessity for arrest under parameters laid down in Section 41, Cr.P.C. — Bail granted — Directions issued. *[Paras 5, 6, 7, 8, 10, 12]*

(ii) Criminal Procedure Code, 1973 — Sections 41, 57 — Constitution of India, 1950 — Art. 22(2) — Arrest by police officer without warrant — Powers of Magistrate — When accused is produced before Magistrate, police officer effecting arrest is required to furnish to Magistrate, the facts, reasons and its conclusions for arrest and Magistrate in turn is to be satisfied that condition precedent for arrest under Section 41, Cr.P.C. has been satisfied and it is only thereafter that he will authorise detention of accused — It shall never be based upon *ipse dixit* of police officer. *[Para 8]*

(iii) Criminal Procedure Code, 1973 — Sections 41, 41A — Arrest by police officer without warrant — Conditions precedent — Explained. *[Paras 9, 10]*

(iv) Criminal Procedure Code, 1973 — Section 41 — Arrest by police officer without warrant — Directions issued by this Court to be followed — Failure in compliance shall render police officer concerned liable for departmental action and also be liable to be punished for contempt of Court — Authorising detention without recording reasons by Judicial Magistrate concerned shall be liable for departmental action by appropriate High Court — Directions 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. *[Paras 12, 13]*

Result : Appeal allowed — High Court judgment reversed.

JUDGMENT

Chandramauli Kr. Prasad, J.—The petitioner apprehends his arrest in a case under Section 498-A of the Indian 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.

2. Petitioner happens to be the husband of respondent No. 2 Sweta Kiran. The marriage between them was solemnized on 1st July, 2007. His attempt to secure anticipatory bail has failed and hence he has knocked the door of this Court by way of this Special Leave Petition.

3. Leave granted.

In sum and substance, allegation levelled by the wife against the appellant is that demand of Rupees eight lacs, 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.

4. 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.

5. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the 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 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, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence under Section 498-A of the 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 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 Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498A, 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.

6. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.P.C. 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 emphasized time and again by 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.

7. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized 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 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, the 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 'Cr.P.C.), 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. 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), Cr.P.C. which is relevant for the purpose reads as follows:

> "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) xx xx xx
>
> (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:
>
> (i) xx xx xx
>
> (ii) the police officer is satisfied that such arrest is necessary—
>
> (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) 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) 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.
>
> xx xx xx

From a plain reading of the aforesaid provision, it is evident that a person accused of 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 its satisfaction that such person had committed the offence punishable as aforesaid. 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. 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. Law further requires the police officers to record the reasons in writing for not making the arrest. In pith and core, the police office 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 of Cr.P.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, Cr.P.C. to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey. 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, Cr.P.C. 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. 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. Before a Magistrate authorises detention under Section 167, Cr.P.C., 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 is 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 condition precedent for arrest under Section 41, Cr.P.C. has been satisfied and it is only thereafter that he will authorise the detention of an accused. The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order. It shall never be based upon the *ipse dixit* of the police officer, for 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 its satisfaction in writing that the Magistrate will authorise the detention of the accused. 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.

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

> "41A. *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.
>
> (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.

(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."

10. Aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1), Cr.P.C., 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 office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41, Cr.P.C. has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

11. We are of the opinion that if the provisions of Section 41, Cr.P.C. which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong 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, Cr.P.C. for effecting arrest be discouraged and discontinued.

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

(1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.P.C.;

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

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

(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;

(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;

(6) Notice of appearance in terms of Section 41A of Cr.P.C. 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;

(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 High Court having territorial jurisdiction.

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

13. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. 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.

14. 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.

15. By order dated 31st of October, 2013, this Court had granted provisional bail to the appellant on certain conditions. We make this order absolute.

16. In the result, we allow this appeal, making our aforesaid order dated 31st October, 2013 absolute; with the directions aforesaid.

Appeal allowed — High Court judgment reversed.

V (2014) SLT 588

SUPREME COURT OF INDIA

A.K. Patnaik & Fakkir Mohamed Ibrahim Kalifulla, JJ.

MD. JAMILUDIN NASIR,
AFTAB AHMED ANSARI @ AFTAB ANSARI —Appellants

versus

STATE OF WEST BENGAL
—Respondent

Criminal Appeal Nos. 1240-1241 of 2010 with Criminal Appeal Nos. 1242-1243 of 2010—Decided on 21.5.2014

(i) Arms Act, 1959 — Sections 25(1A), 27(2), 27(3) — Terrorism — Attack on American Centre in Calcutta — Conviction and sentence imposed on appellants under Section 27(3) of Arms Act has to be set aside since said provision was struck down by Apex Court in *State of Punjab* **v.** *Dalbir Singh,* **(2012) 3 SCC 346 — Section 27(3) of the Arms Act having been struck down on ground that it was *ultra vires* of Constitution and declared as void, convictions and sentence imposed on appellants under Section 27(3) of Arms Act cannot survive — Part of judgment of trial Court as well as High Court imposing punishment of death sentence as against appellants for offences found proved under Section 27(3) of Arms Act, set aside.** *[Paras 11, 12, 80]*

(ii) Indian Penal Code, 1860 — Sections 302, 307, 333, 467, 471, 468 r/w Sections 120B, 121, 121A, 122 — Arms Act, 1959 — Sections 25(1A), 27(2) — Waging war against India — Conspiracy — Attack on American Centre in Calcutta — Confessional statement made under Section 164 was free from any technical flaw — There was no deficiency much less any serious one in accepting confession recorded by Magistrate under Section 164 — Accused having participated in crime right from its initiation till its execution and was taking care of whole gang besides his own