

03.07.2024.  
PB  
Sl. No.6.  
Ct. No.14.

**In The High Court At Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**WPA 17066 of 2024**

Sarika Khatun  
Vs  
The State of West Bengal & Ors.

Mr. Sabyasachi Chatterjee,  
Mr. Pintu Karar,  
Mr. Sayan Banerjee,  
Mr. Kiron Sk.,  
Mr. Ramij Munshi.  
.....for the petitioner.

Mr. Kishore Datta, AG  
Mr. Amitesh Banerjee, Sr. Adv.  
Mr. Debangshu Dinda,  
Ms. Sabnam De Bardhan,  
Ms. S. Mitra,  
Mr. Sayan Dutta,  
Ms. Soma Chakraborty,  
Mr. Suvodeep Moitra.  
.....for the State.

The husband of the petitioner was arrested by the police of the Shibpur Police Station on 30<sup>th</sup> June, 2024 allegedly because he failed to accept the notice under Section 41(A) CrPC dated 30<sup>th</sup> June, 2024, directing him to appear on 1<sup>st</sup> July, 2024 at 11 A.M. in the Shibpur Police Station.

FIR was lodged against the person concerned being FIR Case No.292/2024 dated 28<sup>th</sup> June, 2024 under Sections 500(1)(b)/500 IPC.

The notice mentioned that failure to attend/comply with the terms of the notice could render the addressee liable for arrest under Section 41A(3) and (4) of CrPC.

The section mentioned in the notice under Section 41A CrPC, specially Section 500(1)(b) IPC is not available in the Rule Book. Despite an error in the notice, the husband of the petitioner was arrested from the police station.

The learned Advocate General appearing on behalf of the State respondents submits that the person concerned was arrested as he failed to accept the notice under Section 41A CrPC and the place of arrest is his residence.

Learned advocate representing the petitioner asserts that her husband went to the police station in compliance with the direction of the police and he was detained over there and later on arrested.

The act of the police in fixing the date of appearance on 1<sup>st</sup> July, 2024, but arresting him on 30<sup>th</sup> June, 2024 on the date the notice under Section 41A of the CrPC was issued, appears to be over-jealous act of the police officer.

The very purpose to arrest somebody is either to prevent commission of any cognizable offence or if the person concerned is involved in any crime. Herein, the

allegation against the petitioner is primarily under Section 500 IPC. The other Section in the notice under Section 41A CrPC has been misquoted.

The complaints which triggered the police to take steps were allegedly lodged on 28<sup>th</sup> June, 2024. The husband of the petitioner had made a comment against one of the members of the ruling dispensation who also happens to be the member of the Legislative Assembly in one case.

Only because a citizen has protested or has raised his voice to highlight the illegalities or corruption by a member of the ruling dispensation and against the member of the Legislative Assembly, the police ought to have taken such stringent steps to curtail the freedom of the said citizen. Fundamental right of a citizen of this country to move about freely ought not to be curtailed without abiding the due process of law.

It has been submitted by the learned Advocate General that the person concerned was produced before the learned Magistrate and he is presently in judicial custody.

Prima facie, it appears that the act of detention and arrest of the person concerned is sheer highhandedness on the part of the police officer. Accordingly, the Court is minded to pass direction for

immediate release of the husband of the petitioner. The person concerned should be released from the custody by 5 P.M. today.

It has been submitted by the learned Advocate General, upon instruction, that the person has been arrested only in connection with the FIR Case No.292 of 2024 and no other case is pending against him as on date.

The matter is directed to appear in the list once again on 10<sup>th</sup> July, 2024.

Let this order be communicated to the concerned authority at once.

The notice under Section 41A of the CrPC dated 30<sup>th</sup> June, 2024 be retained with the record. G.D. extracts dated 30<sup>th</sup> June, 2024 of the Shibpur Police Station be also retained with the record.

As dispute has arisen with regard to the place of arrest, let the CCTV Footage of the police station on 30<sup>th</sup> June, 2024 (the entire day) shall be preserved and be produced as and when called for.

The Commissioner of Police, Howrah, shall take into consideration the complaint filed by the petitioner on 28<sup>th</sup> June, 2024, annexed at page 34 of the writ petition.

All parties are directed to act on the basis of the server copy of this order duly downloaded from the official website of this Court.

**(Amrita Sinha, J.)**