

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 574 OF 2013

1. Arun S/o Narayan Tagad,
Age 33 years, Occu: Agril,
R/o: Kumshi, Tq. & Dist. Beed.
2. Shailendra s/o Pralhad Tagad,
Age 34 years, Occu: Service,
R/o: As above.

... PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Secretary Home Department,
Mantralaya Mumbai-32.
2. The Superintendent of Police,
Beed, Dist. Beed.
3. The Collector,
Collector Office, Beed.
4. Gramin Police Station Beed,
Tq. and Dist. Beed.
5. The Tahsildar,
Tahsil Office, Beed.

... RESPONDENTS

...
Mr. N. R. Thorat, Advocate for Petitioners.

Mr. S. J. Salgare, APP for Respondents.
...

CORAM : T. V. NALAWADE &
M. G. SEWLIKAR, JJ.

DATE : 01st December, 2020.

JUDGMENT: (Per T. V. Nalawade, J.)

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The petition is filed for giving direction to Respondents to pay compensation of Rs.5,00,000/- to each of Petitioners on the ground that the Petitioners were illegally arrested and detained in custody at the instance of police.

3 The submissions made and record show that on 28th January, 2013, FIR was given to Beed Rural Police Station against the Petitioners by one lady and the crime for the offences punishable under Sections 323, 324, 504 and 506 read with 34 of the Indian Penal Code was registered. On 30th January, 2013, both the Petitioners were arrested by police of Rural Police Station, Beed and the Petitioners were produced before the Judicial Magistrate First Class, Beed on the same day. The Judicial Magistrate First Class granted bail to both the Petitioners and they were released when they furnished personal bond and surety bond. It is the contention of Petitioners that when they came out of the campus of Court, same police arrested them immediately and they were taken before the

Executive Magistrate, Beed.

4 On 30th January, 2013, both the Petitioners were produced before the Executive Magistrate, Beed and the Executive Magistrate made order against the Petitioners and directed them to give interim bond with two solvent sureties of Rs.25,000/- each. On 30th January, 2013, the Petitioners moved an application before the Executive Magistrate and requested the Magistrate to permit them to give cash security in place of surety bond and they submitted that they had applied for getting solvency certificate, but such certificate generally is not issued immediately. The Executive Magistrate did not allow this application and adjourned the matter to next date.

5 It is the contention of Petitioners that there were *malafides* in the action taken by police and the Executive Magistrate had also did not pass necessary orders and due to that they were illegally detained in jail from 30th January, 2013 for about six days. It is the contention of Petitioners that they are not habitual offenders. It is their contention that Petitioner No.2 was surveying in the military at the relevant time and Petitioner No.1 was a respected person and resident of same locality and so detention was not necessarily in the chapter case. It is contended that he arrest and detention were illegal

and there is violation of the fundamental rights of the Petitioners. The following specific reliefs are claimed in the present matter:

- “B) It may kindly be hold and declared that, the police have no power or authority to arrest the petitioners U/sec. 107 of Cr.P.C. after getting bail.
- C) It may kindly be declared and hold that, order dated 30.1.2013 passed by Executive Magistrate is illegal and violates the fundamental rights of the petitioners.
- D) It may kindly be declared and hold that, the respondent No.4 illegally detained the petitioners.
- E) It may kindly be declared and hold that, the respondents violated the fundamental rights of the petitioners therefore the petitioners are entitled to get compensation from the state.
- F) It may kindly be declared and hold that, the respondents no. 4 and 5 violates the fundamental rights of the petitioners therefore state is liable to pay compensation.
- G) It may kindly be declared and hold that, Petitioners are entitled compensation of Rs.5,00,000/- each from the state.”

6 The submissions made and copy of FIR dated 28th January, 2013 show that incident had allegedly taken place on 22nd January, 2013 at about 08:30 pm. A lady aged about 35 years had given FIR against the present two Petitioners and one Mahendra Tagad, who is a brother of Petitioner No.2. She had made allegations that these three accused had picked up quarrel with her family on the ground that her family had not allowed them to use the bullocks and bullock cart for fetching water. The lady had alleged that during quarrel, Petitioner Shailendra and other Accused Mahendra had assaulted her with fist blows and kick blows and Petitioner No.1 Arun had assaulted her with stick. It is her contention in the FIR that she sustained bleeding injury in the incident and she was somehow saved by her family members and neighbours. It is her contention that her husband was not at home at the relevant time. The contents of FIR show that both the Petitioners were known to her as they hail from her village.

7 The contents of FIR and the submissions made in the present proceeding do not show that there was previous enmity of the Petitioners with the informant. The FIR was also not given immediately. From the contents of FIR and the circumstances, it is not possible to infer that even family of the informant had a feeling

that there was possibility of commission of similar offence by the Petitioners and other accused. The crime was registered for the offences punishable under Sections 324, 323, 504, 506 read with 34 of the Indian Penal Code and this crime is bailable. It is not disputed that the Petitioners were arrested on 30th January, 2013 and on the same day Judicial Magistrate First Class released them on bail.

8 In the reply filed by Respondent, police head constable, who was investigating the aforesaid crime, it is contended that the Deputy Superintendent of Police, Beed Division had directed this police station to take preventive measures against the Petitioners. It is contended that the direction was given on wireless. Photocopy of wireless message is also produced. It is the contention of police head constable Bansi Jaibhaye that when the Petitioners were released on bail by Judicial Magistrate First Class, he asked the Petitioners to appear before the Executive Magistrate on the same day and he did not arrest them. It is contended that on that day, report was submitted to Executive Magistrate and the Executive Magistrate directed the Petitioners to give bond of Rs.25,000/- with two solvent sureties. It is contended that as the Petitioners failed to comply this order, the matter was adjourned to 5th February, 2013 by the Executive Magistrate.

9 The aforesaid circumstances show that even when bailable offence was registered, both the Petitioners were arrested and they were produced before the Magistrate when they could have been released on bail in the police station. The message given by the Sub-Divisional Police Officer shows that he had directed to take preventive measure and due to that the police head constable gave report to Executive Magistrate and it can be said that the report was given after release of Petitioners on bail by the Judicial Magistrate First Class. The submissions made and the record show that the police station requested the Executive Magistrate to start chapter proceeding under Section 107 of the Code of Criminal Procedure and obtain interim bond from them under Section 116(3) of the Code of Criminal Procedure.

10 On the report given by the police for starting chapter proceeding, the Executive Magistrate made order of following nature in Marathi:

“The opponents were produced by police head constable Jaibhaye. The opponents were directed to give personal bond and bond of two sureties of Rs.25,000/- by each of them. If the opponents fail to furnish bond, they are to be taken to jail and they

are to be kept in jail till next date. The next date is fixed as 5th February, 2013.”

11 There is a copy of application, which was given by Petitioners on 30th January, 2013 and it can be said that this application was moved after passing of aforesaid order by Executive Magistrate. This application shows that the Petitioners offered to give cash security of aforesaid amount and it was also submitted that two sureties like Umakant Tagad, resident of Kumshi, District Beed and Harishchandra Raosaheb Nikam were present to execute the bond as surety. It was also written in the application that for getting solvency certificate in respect of these sureties, applications were already moved, but it may take some time. On this application, the Executive Magistrate made order that the amount was to be accepted on 1st February, 2013. There is a copy of another application given for the Petitioners by their Advocate and it is dated 31st January, 2013. This application shows that it was again requested to Executive Magistrate to give time for getting solvency certificate and atleast 2-3 days time was required for that. On this application, the Executive Magistrate made order, which is as follows:

“Time granted. Release on today.”

However, it is the contention of the Petitioners that they were detained in custody for about six days i.e. till 5th February, 2013.

12 As the Petitioners have contended that both the arrest and the detention was illegal, this Court is discussing the provisions of the Criminal Procedure Code. It is already observed that the offence for which crime was registered is bailable and so they could have been released on bail in the police station itself. The provision of Section 107 of the Code of Criminal Procedure falls in Chapter VIII. The purpose of Chapter VIII is given in the heading of the Chapter and it shows that the provisions are made for security for keeping the peace and for good behaviour. The scheme of this Chapter shows that in different circumstances, chapter cases can be started under different sections like Section 107 to 110. The power given under Section 106 of the Code of Criminal Procedure is of different nature and that need not be discussed in the present matter. In the present matter, there was a proposal to start chapter proceeding under Section 107 of the Code of Criminal Procedure and so this provision needs to be considered. The provision runs as under:

“107. Security for keeping the peace in other cases.– (1) When an Executive Magistrate receives information that any person is likely to commit a

breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.”

13 The provision of Section 107(1) of the Code of Criminal Procedure shows that there are conditions for starting the proceeding under this section and the conditions are as under:

- (i) That there was information against the opponent that he was likely to commit breach of peace or he was likely to disturb the public tranquillity or the opponent was likely to do any wrongful act, which may occasion breach of peace or disturbance of public tranquillity;
- (ii) There should be material before the Executive Magistrate for forming opinion that there is aforesaid probability;

- (iii) There should be subjective satisfaction of Executive Magistrate that such ground exists and that opinion needs to be formed on the basis of material;
- (iv) After forming such opinion, the Executive Magistrate needs to issue show cause notice against the opponent and then it can be said that the Executive Magistrate has taken cognizance of the matter and the chapter proceeding starts.

14 In the present matter, the record shows that there was only police report of aforesaid police head constable before the Executive Magistrate and that was in respect of registration of aforesaid crime. The report does not show that any document including copy of aforesaid FIR was supplied to the Executive Magistrate. On this report itself, the Executive Magistrate made the order and directed the Petitioners to execute interim bond under Section 116(3) of the Code of Criminal Procedure of aforesaid nature. The record produced and the reply of the police head constable does not show that before passing such order, any order of show cause as required under Section 111 of the Code of Criminal Procedure was made. Section 111 of the Code of Criminal Procedure runs as under:

“111. **Order to be made.**— When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.”

15 It is contended by the police head constable in the reply that he had only directed the Petitioners to appear before the Executive Magistrate when they were released on bail by the Judicial Magistrate First Class. This contention appears to be incorrect and false. The aforesaid order of interim bond made by Executive Magistrate shows that the Petitioners were brought before the Executive Magistrate by police head constable Jaibhaye. This circumstance supports the contention of the Petitioners that immediately after their release on bail by the Judicial Magistrate First Class, they were taken in custody by police and they were produced before the Executive Magistrate. Though there is such clear probability, there is no record to show their formal arrest under any provision of law after they were released by the Judicial Magistrate First Class in aforesaid crime.

16 Even if the contention of police head constable Jaibhaye is accepted as it is that he had directed the Petitioners to appear before the Executive Magistrate, he could not have done it in view of the provisions of Chapter VIII. Only after passing of some order under Section 107 read with Section 111 of the Code of Criminal Procedure, the opponents can be directed to appear before the Executive Magistrate if they are not arrested under any provision of law.

17 The provision of Section 113 of the Code of Criminal Procedure shows that the Executive Magistrate can issue summons or warrant for appearance of opponents to answer the show cause notice, which is required to be issued under Section 111 of the Code of Criminal Procedure. The provision of Section 113 of the Code of Criminal Procedure needs to be read with the provision of Section 116 of the Code of Criminal Procedure. Relevant portion of Section 116 of the Code of Criminal Procedure is as under:

“116. Inquiry as to truth of information.– (1) When an order under section 111 has been read or explained under section 112 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under

section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) ...

(3) After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:

Provided that—

(a) no person against whom proceedings are not being taken under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behaviour;

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111.”

18 The provision of Section 113 and relevant portion of provision of Section 116 of the Code of Criminal Procedure quoted above shows that when chapter proceeding is started under Section 107 of the Code of Criminal Procedure, the Executive Magistrate is not expected to issue warrant. He can issue only summons or notice and send show cause notice under Section 111 of the Code of Criminal Procedure to opponents. The grounds given in Section 107 of the Code of Criminal Procedure are not that serious and they do not show that there is urgency and they need to be arrested first. Ordinarily, for proposing chapter case under Section 108, 109 and 110 of the Code of Criminal Procedure, police use provision of Section 151 of the Code of Criminal Procedure and they make arrest and then they produce the accused alongwith proposal of chapter case before the Executive Magistrate. The provision of Section 151 of the Code of Criminal Procedure enables police to arrest the opponent as the police form opinion that there is a possibility of commission of cognizable offence by the opponent. There is no such possibility when chapter case is to be started under Section 107 of the Code of Criminal Procedure. Thus, arrest before issuing show cause notice under Section 111 of the Code of Criminal Procedure when chapter

proceeding is to be filed under Section 107 of the Code of Criminal Procedure is not permissible and it is illegal. Similarly, in view of the provision of Section 116(3) of the Code of Criminal Procedure, interim bond cannot be obtained from the opponent when chapter proceeding is started against him under Section 107 of the Code of Criminal Procedure.

19 The aforesaid discussion shows that the order of Executive Magistrate asking the present Petitioners to execute interim bond of aforesaid nature is illegal. The bond was involving onerous condition, two sureties having solvency certificate of Rs.25,000/- each for each opponent. These circumstances show that there were *malafides* and intention of the police was to see that the Petitioners are arrested and they are kept behind bars for few days. The record and circumstances show that the Executive Magistrate acted as per such desire of police and he did not apply his mind. The Executive Magistrate ought to have gone through the aforesaid provisions which show that he had no such jurisdiction.

20 In *Criminal Writ Petition No.955 of 2019*, (*Kisan Rupa Pawar and another Vs. The State of Maharashtra and others*) decided at this Bench on 5th November, 2019, this Court has considered the

law developed on illegal arrest and illegal detention. This Court has laid down, on the basis of observations made by the Apex Court that in such cases, the victim is entitled to get compensation. The observations are at para 13 and they are as under:

“13) In the landmark case of **D.K. Basu Vs. State of W.B.** reported as **AIR 1997 SC 610**, the Supreme Court has laid down the law in respect of the illegal detention and reliefs which can be granted in such cases. In other case, of **Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others** reported as **AIR 1993 SC 1960**, the Apex Court has laid down that such actions of police are in blatant violation of human rights. The Apex Court has referred the provisions of International Covenant on Civil and Political Rights, 1966 to which India is a party. The Apex Court has laid down that Articles 21 and 226 of Constitution of India make it not only possible but necessary for the Court to grant compensation in such cases. Even mistake cannot be excused in such cases. This Court is not expected to decided as to whether there was the malice. So, this Court holds that compensation needs to be given to the petitioners.”

21 Similar observations are there in ***Criminal Writ Petition No.1107 of 2018, (Imtiyajbi w/o Akbar Shah Vs. The State of Maharashtra and others)*** at paras 9 and 10 and they are as under:

“9) Learned counsel for the petitioner placed reliance on the observations made by the Apex Court in following three cases.

(1) *Rudul Sah v. State of Bihar* [AIR 1983 SC 1086];

(2) *Arvinder Singh Bagga v. State of U.P.* [AIR 1995 SC 117]; and,

(3) *S.Nambi Narayanan v. Siby Mathews* [2018 AIR SC 5112].

10) In all the three cases the Apex Court had considered the provision of Article 21 of the Constitution of India and had held that in such cases person who is illegally detained is entitled to get compensation from the State. In the case reported as **Ram Dass Ram v. State of Bihar**, [AIR 1987 SC 1333] the Supreme Court held that such detention would be unjustified. It can be said that the authority ought to have acted confidently and there was nothing in the operative order which could have confused the authority. In such cases the State needs to be made to pay compensation first and then the State can be allowed to recover the amount from the officer who has committed error or who was found negligent in taking urgent steps for release of the prisoner.”

22 In the present matter, only because there is a copy of order dated 31st January, 2013 showing that on that day Executive

Magistrate had given direction to release the opponents and time was give to them as prayed, this Court holds that the compensation cannot be on higher side. There is a clear possibility that to the Executive Magistrate there was no proper training. The powers available, which are in Chapter VIII of the Code of Criminal Procedure are invested either in police officer of higher rank or some revenue officer and as they have no training, when superior police officer issue some instructions like done in the present matter and orders of the aforesaid nature are passed. In any case, it needs to be made known to Executive Magistrate that he has passed illegal order and he had no jurisdiction to pass such order. Only because he was expected to discharge the duty given under Chapter VIII of the Code of Criminal Procedure, he may not be directed to pay compensation. However, the State needs to obtain the explanation and fix some kind of responsibility in such cases. It is serious mistake committed by the Executive Magistrate. In the result, the following order is passed:

ORDER

- I. The petition is allowed.
- II. The Respondents shall pay Rs.50,000/- (Rupees Fifty Thousand only) to each Petitioner as compensation for illegal detention.

- III. Initially, the State Government has to pay this amount and it is to be done within 45 days from today, failing to which the amount will carry interest at the rate of 8% per annum.
- IV. It is open to the State to fasten responsibility on concerned police officer and the then Executive Magistrate and recover amount.
- V. Rule is made absolute in those terms.

ndm

[M. G. SEWLIKAR, J.]

[T. V. NALAWADE, J.]