

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

CRIMINAL WRIT PETITION NO. 38 OF 2015

- 1] Shivnath s/o Vishwanath Lambe,
age 38 years, occ. Agriculture,
R/o village Jambarkheda,
Taluka Vaijapur,
District Aurangabad,
- 2] Ashok s/o Haribhau Lambe,
age 25 years, occ. Private Service
as Driver,
R/o as above

...Petitioners

[Original Accused Nos. 5 & 6]

VERSUS

The State of Maharashtra,
through the Assistant Police
Inspector, Shrirampur Taluka
Police Station, Shrirampur,
District Ahmednagar

...Respondent

.....
Shri Rajendra S. Deshmukh, advocate for petitioners
Shri S.A.Ambad, A.P.P. for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 13th January, 2015

ORAL JUDGMENT : -

- 1] Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties taken up for final hearing.

2] Heard Shri Rajendra S. Deshmukh, learned counsel for the petitioners and Shri S.A.Ambad, learned Additional Public Prosecutor for the respondent/State.

3] The present petitioners are original accused nos. 5 and 6 in Crime No. 21 of 2014, registered with police station Shrirampur for the offences punishable under Sections 3, 5, 7 and 25 of the Arms Act, 1959. The first information report was recorded in the said police station on 27.12.2014.

4] On 28.12.2014 original accused nos. 1 and 2 were arrested in connection with the said crime and they were produced before the learned Magistrate and ultimately on the prayer being made by the investigating officer for their police custody remand the learned Magistrate found favour with the investigation officer and the police custody remand of original accused nos. 1 and 2 was granted for a period of two days from 28.12.2014.

5] According to the prosecution, during the police custody remand of accused nos. 1 and 2 the name of the present petitioners was divulged as the purchaser of country made pistol, and accordingly, on the basis of such information, which was received by the investigating officer during the investigation of original accused nos. 1 and 2 the present petitioners

were arrested on 29.12.2014.

6] The police custody remand of accused nos. 1 and 2 was to expire on 30.12.2014. On the same day, it was obligatory on the part of the investigating officer to produce the present petitioners within 24 hours of their arrest before the learned Magistrate. The investigating officer produced the original accused nos. 1 and 2 and the present petitioners before the concerned Magistrate on 30.12.2014 with the prayers :-

- (I) to extend the police custody remand of accused nos. 1 and 2; and
- (ii) to grant police custody remand of the present petitioners i.e. accused nos. 5 and 6.

The investigating officer supplemented the reasons as to why he requires the extension of the police custody remand of accused nos. 1 and 2 and police custody remand for present petitioners.

7] After hearing the learned Assistant Public Prosecutor and also on the report of the investigating officer, the learned Magistrate refused to grant any of the prayer made by the investigating officer and on 30.12.2014 the learned Magistrate instead of extending police custody remand in respect of accused nos. 1 and 2 and granting police custody remand for accused nos. 5 and 6, took them into the magisterial custody.

8] As soon as the accused persons were taken up in the magisterial custody, the present petitioners on the very same day i.e. on 30.12.2014 filed an application to release them on bail. Their application for bail was found favour with the learned Magistrate and on the said day the present petitioners were released on bail on certain conditions.

9] On 2.1.2015, the public prosecutor filed Revision Petition before the court of Additional Sessions Judge, Shrirampur. The said Revision was registered as Criminal Revision Application No. 1 of 2015. The prayer clause of the said Revision Application reads as under :-

“ It is therefore prayed that,
the Revision Application be kindly allowed.

The impugned order of learned J.M.F.C. Court No.1, Shrirampur dated 30.12.2014 in Crime No. II 21/2014 for the offence punishable under S. 3,5,7 and 25 of Arms Act on M.C.R. Remand be kindly set aside and police custody of opponents be given to I.O. for investigation purpose.”

Thus, what was challenged before the learned Revisional Court was refusal of police custody remand and the action on the part of the learned Magistrate in sending the accused persons including the present petitioners in the magisterial custody remand.

10] The learned Additional Sessions Judge, upon hearing, on 6.1.2015 partly allowed the Revision and set aside the order of the learned Magistrate in refusing to grant police custody remand to accused nos. 3 to 6, which includes the present petitioners. The learned Revisional Court further directed that the learned Magistrate shall fix the matter on 7.1.2015 for passing appropriate orders in respect of the police custody remand of accused nos. 3 to 6.

11] In pursuance to the order passed by the Revisional court on 7.1.2015, an application was moved by the investigating officer in the court of Judicial Magistrate, First Class, Shrirampur, by which it was prayed that the bail granted in favour of the present petitioners should be cancelled and necessary orders for the police custody remand be passed.

The said application, of course, was objected by the present petitioners and the other accused persons. On the very same day i.e. on 7.1.2015 the learned Magistrate cancelled the bail granted to accused nos. 3 to 6 and issued non-bailable warrant against the accused nos. 3 to 6, which includes the present petitioners.

12] It is the order passed by the learned Revisional Court which is questioned before this court by the petitioners.

13] The learned Additional Public Prosecutor vehemently submitted that the learned revisional court was right in upsetting the order passed by the learned Magistrate in view of the fact that the offence pertains to the Arms Act.

14] For praying police custody remand, it is obligatory on the part of the investigating officer to satisfy the learned Magistrate as to why he requires the police custody remand of such accused persons. Mere wish of the investigating officer is not sufficient for claiming the police custody remand. The prayer for extension of the police custody remand coming from the side of the investigating officer has to be substantiated by the investigating officer not only by putting forth the reasons but also by pointing out the progress in the investigation carried out when the accused persons were in his custody.

In so far as fresh police custody remand is concerned, sole criteria for praying the police custody remand is that the investigating officer must satisfy the learned Magistrate as to why he requires the police custody remand. Merely because the police custody remand is requested or prayed by the investigating officer, the learned Magistrate is not obliged to accept or accede to the prayer of the investigating officer, but the learned Magistrate has to reach to the conclusion on the basis and by evaluating the material and reasons put forth

before him by the investigating officer.

15] In this context, it will be useful to have a reference to the request made by the investigating officer before the learned Magistrate on 30.12.2014 as to why he requires the police custody remand of accused nos. 5 and 6 namely the present petitioners. The reasons are stated herein below.

- “ १) आरोपी कर. १ व २ यांचे कडेस ता. २७.१२.२०१४ रोजी मिळालेला गावठी बनावटीचा पिस्तुल त्यांनी कोठून व कोणाकडून आणला हे सांगत नाहीत.
- २] आरोपी यांनी वरील पिस्तुल व आरोपी कर. ५ यांस विकलेला आणि सचिन बनकर यांस विकलेला पिस्तुल त्यांनी कोठून व कोणाकडून आणला हे सांगत नाहीत.
- ३] आरोपींना आणखी साथीदार आहेत त्यांची मोठी टोळी आहे त्या टोळीमधील नावे अटक आरोपींना माहिती आहेत. त्यांचे ठावठिकाणे माहित आहेत. परंतु ती माहिती असून ते जाणूनबुजून देत नाहीत.
- ४] सचिन बनकर हा कोठे राहतो, त्याचा निश्चित पत्ता काय याबाबत अटक आरोपींना माहिती आहे. त्याची सुद्धा माहिती अटक आरोपी सांगत नाहीत.
- ५] सदर गुन्ह्याच्या तपासात २ पिस्तुल हस्तगत करणे व इतर साथीदारांची नावे निष्पन्न करून त्यांचा शोध घेवून त्यांना अटक करून गुन्ह्याचा तपास करणे आहे.
- ६] गुन्ह्याच्या तपासात ऐनवेळी येणाऱ्या महत्वाच्या मुद्द्यावर तपास करणे आहे. ”

The learned Magistrate, after perusing these reasons and after hearing the learned Public Prosecutor as well as the investigating officer, in my view, has rightly recorded a finding that the investigating officer has miserably failed to claim the police custody remand of the present petitioners on sustainable grounds, and therefore, the learned Magistrate was right in rejecting the prayer for police custody remand and taking them into the magisterial custody remand.

16] In so far as the observation of bail is concerned, those are out of context. However, since the learned Revisional Court has observed that the offences were non-bailable, the prosecution has remedy to approach before appropriate court by filing appropriate application on the available grounds.

17] Since the order passed by the Revisional Court is completely silent in respect of reaching to his conclusion as to why the investigating officer was successful in praying for police custody remand, the said order on Revision setting aside the order of the learned Magistrate in rejecting the prayer for the police custody remand and taking the accused persons into the magisterial custody remand deserves to be set aside. Consequently, the order passed by the learned Judicial Magistrate, First Class, Shrirampur, dated 7.1.2015 deserves to be quashed and set aside; with a direction that the non-bailable warrant issued against the present petitioners by the Judicial Magistrate, First Class (Court No.2), Shrirampur, dated 7.1.2015, if not executed, shall not be executed.

18] In the result, the present Writ Petition succeeds, however, in part. The order passed by the learned Additional Sessions Judge, Shrirampur, dated 6.1.2015 together with the order passed by the learned Judicial Magistrate, First Class, Court No. 2, Shrirampur, dated 7.1.2015 are hereby quashed

and set aside. However, it is made clear that the investigating officer will be at liberty to file appropriate proceedings before the appropriate court in respect of grant of bail to the present petitioners, which is granted in favour of the present petitioners by the learned Magistrate on 30.12.2014. With these observations, Rule is made absolute in part.

19] Authenticated copy of this judgment is permitted.

[V.M.DESHPANDE, J.]

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