

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 739 OF 2015
(Ganpat Babuji Kurwatkar Vs. The Supdt. Of Prison, Nagpur & others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. P. Gadling, Advocate with Mr. N. B. Rathod, Advocate
for the petitioner.
Mrs. Bharti H. Dangre, Government Pleader for the State-
respondents.

CORAM : B. R. GAVAI AND
P. B. VARALE, JJ.
DATED : 28 OCTOBER, 2015

Heard.

2. The petitioner has filed this petition praying for writ of *habeas corpus* directing respondent Nos. 2 and 4 to produce Maroti Ganpat Kurawatkar, son of the petitioner and to set him at liberty forthwith.

3. It is the grievance of the petitioner that his son, who was granted bail in connection with crime registered against him, was entitled to be released on 11/9/2015, but he was detained and was released on 12/9/2015. It is further the grievance of the petitioner that though his son was released from the Central prison, Nagpur on 12/9/2015, immediately after he came out of the prison, he was dragged away by some police officers.

4. Prima facie finding that the action of the respondents in arresting the petitioner's son Maroti immediately after his release on

bail and not following the procedure as prescribed under Section 267 of the Code of Criminal Procedure to be unsustainable, we directed the petitioner to be released on furnishing bail bond in the sum of Rs.15,000/- with two solvent sureties of Rs.15,000/- each, one from Nagpur and another from Chandrapur, before the Registrar (Judicial) of this Court. In pursuance of the order passed by this Court, the petitioner's son has already been released on bail.

5. Taking into consideration that the action of the police in arresting the petitioner's son was made at the instance of Superintendent of Police, Gadchiroli District, we had directed the petitioner to amend the petition and implead him in personal capacity. Accordingly, Shri Sandip Patil, Superintendent of Gadchiroli Police has been impleaded as respondent No.6 on 30/9/2015 and an affidavit-in-reply has been filed by him on 20/10/2015.

6. The matter was heard in the morning session. Perusal of the reply would reveal that respondent No.6, finding that the petitioner's son was also involved in Crime No. 120/2009 of Chamorshi police station and Crime No.0172/2009 of Gadchiroli police station, was of the opinion that custody of said Maroti was necessary for interrogation in the aforesaid crimes and as such directed his arrest. It is further stated by the deponent in the affidavit that when Maroti was taken in custody, he was already

released from the prison and as such he was under the bona fide impression that the provisions of Section 267 Cr. P. C. would not be required to be followed.

7. In the morning session itself we have expressed that such a stand was not in accordance with the provisions of the Constitution and the statute. If, according to respondent No.6, custody of Maroti Kurwatkar was required for conducting interrogation in connection with Crime No.120/09 and 0172/09, nothing precluded him from making an application with the Competent Court for obtaining orders in accordance with the provisions of Section 267 Cr. P. C., in as much as said Maroti was behind the bar from January, 2012 to September, 2015.

8. We prima facie found that the contention raised by the learned Counsel for the petitioner that *modus operandi* adopted by various police officers is to arrest the persons as soon as they are released from the prison and continue there detention. A person, even though alleged to have been connected with naxlite activities or anti-social or anti-national activities, cannot be denied the fundamental rights that are available to the citizens. It is further to be noted that Article 21 of the Constitution is available not only to the citizens of India but also available to every person. A person would be entitled to protection under Article 21 if he is not a citizen of India. A denial of protection under Article 21 of the Constitution,

in our considered view, needs to be deprecated.

9. However, today, respondent No.6 has filed an affidavit tendering his unconditional apology. He has stated therein that his action was not bona fide and upon incorrect interpretation of the provisions of Section 267 of Cr.P.C. was made. He has further stated that there was no malafide intention in initiating the said action. He has also undertaken and assured the Court that in future, he would be cautious in dealing with fundamental rights of each citizen, though such a person happens to be an accused in any offence. He has further undertaken that he will not repeat the error committed by him and he would act strictly in accordance with the procedure prescribed by law.

10. It appears that respondent No.6, in a haste to perform his duty, has committed an error. However, there does not appear anything on record to come to a conclusion that he had any mala fide intention against the son of the present petitioner. On a specific query to the learned Government Pleader about the previous record of respondent No.6, the learned Government Pleader makes a categorical statement that the previous record of respondent No.6 is unblemished.

11. We accept the unconditional apology tendered by respondent No.6 and direct that he will not repeat such mistake in future and that he shall strictly follow the procedure prescribed by

law.

12. However, it is to be noted that the police authorities while dealing with the accused, whether he may be involved in serious offence or not, must conform to the mandate of the Constitution and the statutory provisions. A person till he is convicted, is only an accused of an offence/s with which he is charged and only after a full-fledged trial when material is found against such person to convict him, he becomes a convict. Even, convict is entitled to the Constitutional rights.

We, therefore, direct the Director General of Police to give instructions to all the police officers within the State of Maharashtra, that while dealing with the accused persons, the police officers should ensure that the mandate of the Constitution of India and statutory provisions are adhered to.

13. Insofar as the present matter is concerned, the petitioner's son is already released on bail. We allow the petition by confirming his bail which was granted by us on 30/9/2015.

JUDGE

JUDGE