

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

Criminal Writ Petition No.44 of 2009

* Bibhishan s/o Rajaram Kale,
Age 38 years,
Occupation : Agriculture,
R/o Andora, Taluka Kallam,
District Osmanabad. **.. Petitioner.**

Versus

- 1) The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai.
- 2) The District Superintendent of Police,
Osmanabad, District Osmanabad.
- 3) Mallikarjun B. Surwase,
Age 54 years,
Occupation: Service,
as Police Inspector,
Police Station Kallam,
Taluka Kallam, Dist Osmanabad.
- 4) B.R. Tambare,
Age 52 years,
Occupation: Service as
Police Sub Inspector,
Police Station Kallam,
Taluka Kallam,
District Osmanabad. **.. Respondents.**

Shri. Suhash B. Ghute, Advocate, for petitioner.

Shri. S.D. Ghayal, Additional Public Prosecutor, for
respondents.

**Coram: T.V. NALAWADE &
S.M. GAVHANE, JJ.**

Date : 15 SEPTEMBER 2017

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

1) The petition is filed for relief of compensation on the ground of illegal arrest and detention of the present petitioner. Both the side are heard.

2) In CR No.63/2008, registered in Kallam Police Station for offences punishable under sections 302, 201, 149 of the Indian Penal Code present petitioner was shown as one of the accused. Application for anticipatory bail filed by the petitioner in Sessions Court was rejected. He then filed Criminal Application No.2484/2008 for relief of anticipatory bail in this Court. On 30-7-2008 this Court granted interim relief in favour of the petitioner and the matter was made to stand over to 13 August 2008.

3) It is the case of the petitioner that the aforesaid interim order was made at 11.45 a.m. and in ordinary course and even as per the oral directions given by this

Court, learned Additional Public Prosecutor was expected to communicate the interim order to the concerned police station. It is his contention that the learned Additional Public Prosecutor Shri. Borade had informed about the order at 12.05 p.m. to the concerned police station on telephone. It is contended that the investigating officer, respondent No.3, and his assistant respondent No.4 ignored the order made by this Court and arrested him at 2.30 p.m. in the aforesaid crime. It is contended that he was produced before the Judicial Magistrate and he was committed to custody till 2-8-2008. It is contended that on 31-7-2008 itself learned counsel for the petitioner had collected the order made by this Court and the Advocate had approached the concerned police station with the order but the police turned blind eye towards the order and no further steps were taken. It is contended that after showing the order when request was made to the investigating officer to release the petitioner on bail, he was not released on bail. It is contended that due to this conduct of the respondents, he remained in custody till 9-9-2008. It appears that anticipatory bail application filed in this Court came to be disposed of due to the arrest.

Sessions Court granted bail to the petitioner on 9-9-2008. By making aforesaid contentions the petitioner has claimed compensation of Rs.10 lakh and he has prayed for giving direction to State to take departmental action against the two police officers.

4) The State has opposed the proceeding by filing reply affidavit. It is the contention of the respondents that on 30-8-2008 early in the morning action was taken by the police officer to make arrests of absconding accused in that case and after making entry in the station diary they had left for the village. It is contended that after completing the action the petitioner was taken in custody in the village at 10.30 a.m. on 30-7-2008. It is contended that the memorandum of panchanama of arrest was made at 14.30 p.m. but prior to that the petitioner was taken in custody and the arrest was effected and then he was produced before the JMFC for getting police custody remand. It is contended that the order made by this court was received on 1-8-2008 and so no effect could have been given to the order. In the reply, the background of the petitioner is mentioned by saying that against him as

many as 8 crimes were registered against him which were for offences punishable under sections 380, 379, 353, 457 etc. of the Indian Penal Code.

5) Copy of station dairy dated 30-7-2008 made at 6.05 a.m. shows that a team of police officers had left for the village for effecting raid. Copy of arrest panchanama produced shows that the petitioner was taken in custody but the memorandum was prepared in the police station at 2.30 p.m. of 30-7-2008. After preparing memorandum, entry of arrest was made in the station diary. Further unconditional apology is tendered by the officers by contending that if they have committed mistake then they be forgiven for the same.

6) Provision of section 46 of the Cr.P.C. shows the manner in which the arrest can be made. Other provisions are with regard to preparation of the record of arrest. As there is record of aforesaid nature showing that police party had gone to the village of the petitioner to effect the arrest in the morning and they had taken the petitioner in custody in the village, this Court holds that the arrest was

made prior to making of the order of interim nature by this Court. Thus, the arrest or detention cannot be called as illegal in the present matter. In view of these circumstances no relief can be given to the petitioner. In the result, the petition stands dismissed. Rule is discharged.

Sd/-
(S.M. GAVHANE, J.)

Sd/-
(T.V. NALAWADE, J.)

rsl