

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

CRIMINAL WRIT PETITION NO.198 OF 2015

Sachin Shantaram Sonwane,
Age : 33 years, Occu. Business,
R/o B-10, Mithul Enclave, CHS Ltd.
Mahul, Chembur, Mumbai-74.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through the Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Superintendent of Police,
Ahmednagar, Dist. Ahmednagar.
3. B.B.Shinde
The Police Inspector,
Kopargaon Police Station,
Kopargaon, Dist. Ahmednagar.
4. Pramod S/o Bhausahab Labde,
Age Major, Occu: Politician,
R/o Mahegaon (Deshmukh)
Tq. Kopargaon, Dist. Ahmednagar.
5. Pallavi S/o Sachin Sonwane,
Age 32 years, Occu: Household,
R/o Sanvi Bunglow, Garima Nagar,
Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar.

... **Respondents**

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Mr. V.D.Sapkal h/f Mr. Yuvraj S. Choudhari, Advocate for Petitioner

Mr. M.M.Nerlikar, APP for Respondent Nos.1 & 2 – State
Mr. Balaji Shinde h/f Mr. V.P.Latange, Advocate for Respondent No.3

Respondent No.4 served

Mr. S.G.Gorde Patil, Advocate for Respondent No.5
(Absent)

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**CORAM : S.S.SHINDE AND
MANGESH S. PATIL, JJ.**

RESERVED ON : 08th November, 2017

PRONOUNCED ON : 22nd November, 2017

JUDGMENT : (Per Mangesh S. Patil, J.) :-

Rule. The Rule is made returnable forthwith.
With the consent of both the sides the matter is heard finally.

2. The Writ Petition is filed under Article 226 of the Constitution of India with following prayers :

“C. This Hon’ble Court by issuing writ of mandamus or any other appropriate writ, order or directions in the like nature of writ, the respondent No.1 and 2 may kindly be directed to initiate the Departmental Enquiry against the respondent No.3 also to initiate criminal proceedings against the respondent No.4 in view of the N.C. Complaint No.307/2014 filed by the petitioner before Police Station, Kopergaon.

D. The contempt proceedings may kindly be initiated against the respondent No.3 in view of the failure to comply the directions issued by the Hon'ble Supreme Court in the matter of Arnesh Kumar Vs. State of Bihar and others and be punished under the provisions of Contempt of Courts Act.

D. The respondent No.3 may kindly be directed to pay compensation of Rs.10,00,000/- to the petitioner for illegally detaining the petitioner for more than 33 hours."

3. According to the petitioner, Respondent No.3 illegally detained him for 33 hours in connection with FIR No.223 of 2014 registered with Kopergaon Police Station. According to the Petitioner, his marriage with Respondent No.5 was solemnized on 27.12.2010. After the marriage, the couple started residing at their matrimonial house at Chembur, Mumbai, while his parents were residing at their native village Chas, Taluka Sinner, District Nashik. In the year 2012, he had lent an amount of Rs.5,80,000/- to the brother of Respondent No.5 for purchasing a car. When he started demanding the amount back, Respondent No.5 began quarreling with him and started residing at her parental house. She then, lodged FIR No.223 of 2014 at Kopergaon Police Station and an offence under Sections

498-A, 406, 323, 504, 506 read with Section 34 was registered against him and his parents.

4. According to the petitioner, on 11.09.2014 Respondent No.3 who was then attached to the Kopergaon Police Station sent a police party to the house of petitioner at Chembur, at 6.00 a.m. He was taken to the R.C.F. Police Station, Chembur and then he was taken to Kopergaon Police Station by 1.00 p.m. of the same day and was put in the custody. However, instead of producing him before the Magistrate as per the mandate of the law he was illegally detained for more than 33 hours and was produced before the Magistrate on 12.09.2014, at 3.00 p.m. Thus, according to the petitioner, he was illegally detained by Respondent No.3 in violation of Article 21 and 22 of the Constitution of India and hence he has made the above mentioned prayers.

5. Respondent Nos.2 and 3 have filed separate affidavits-in-reply which are similar. Respondent No.3

was Police Inspector posted in Kopargaon Police Station and also the Inquiry Officer has submitted his affidavit-in-reply. They have admitted registration of the FIR and that Respondent No.3 was investigating the crime. They have stated that Respondent No.3 had obtained permission of the Superintendent of Police, Ahmednagar for investigating the matter. After such permission was obtained one Mr. Sudhir Patil, PSI went to Mumbai in search of the petitioner. On 11.09.2014, at about 6.35 a.m. an entry was made in the Police Station Diary at R.C.F. Police Station Chembur, Mumbai and Mr. Sudhir Patil along with two police constables took the petitioner in custody at about 8.15 a.m. on the same day i.e. on 11.09.2014 and even an entry to that effect was also made in the police diary Exh.R-2. Then Mr. Sudhir Patil proceeded to Kopargaon with the petitioner and reached at Police Station Kopargaon at 15.15 hours of the same day. The petitioner was formally arrested at 15.45 hours by Respondent No.3 who was investigating the offence. It has been specifically mentioned that Respondent No.3 had followed the procedure as

contemplated by the Supreme Court in the case of ***Arnesh Kumar Vs. State of Bihar and another*** ***[(2014) 8 SCC 273]***. He executed the check list under Section 41 of Cr.P.C. by following the procedure under Section 50 thereof. The petitioner was then taken to jail. On the next day, i.e. on 12.09.2014, at about 10.20 a.m. he was brought to the Police Station for interrogation. He was lateron produced before the Judicial Magistrate First Class, Kopargaon at about 15.00 hours. Thus, according to him, right procedure was followed in producing the petitioner before the Magistrate within the statutory period.

6. We have heard the learned Advocate for the petitioner, the learned APP for the State and learned Advocate for Respondent Nos.3. We have also carefully gone through the entire papers.

7. According to the advocate for the petitioner, under the directions of Respondent No.3 who was the Investigating Officer the petitioner was made to move

out of his house at 6.00 or 6.45 a.m. of 11.09.2014. He was taken from Chembur to Kopergaon Police Station on the same day but he was formally arrested at 15.45 hours and was produced before the Magistrate at 3.00 p.m. of 12.09.2014. Thus according to the learned advocate, even going by the affidavit-in-reply filed on behalf of Respondent No.2, he was produced before the Magistrate after 33 hours from the time he was taken out of his house which is clearly a violation of Article 21 and 22 of the Constitution of India, in breach of the fundamental right guaranteed to a citizen by a Constitution. The learned Advocate also placed reliance on the decision in the case of ***D.K.Basu Vs. State of West Bengal*** [(1997) 1 SCC 416], ***Directorate of Enforcement Vs. Deepak Mahajan and another*** [AIR 1994 SC 1775] and obviously the decision in the case of ***Arnesh Kumar Vs. State of Bihar and another*** [(2014) 8 SCC 273]. The learned Advocate also cited the decisions of various Division Benches of this Court in the case of ***Niraj Ramesh Jariwala and others Vs.***

Mahadeo Pandurang Nikam and others [2013 ALL MR (CRI) 1], The State of Maharashtra Vs. Shri. Sagar Balu Ubhe [2014 ALL MR (Cri) 1010] and Satish Vasant Salavi Vs. The State of Maharashtra and others [2015 ALL MR (Cri) 3388].

8. Per contra, the learned APP and also the learned Advocate for Respondent No.3 submitted that all the procedure as per the directions in the case of *D.K.Basu* and *Arnesh Kumar* (supra) was duly followed and there was no violation of Article 21 and 22 of the Constitution of India. The learned APP and the learned Advocate also submitted that the petitioner was for the first time arrested at 15.45 hours of 11.09.2014 and was produced before the Judicial Magistrate First Class, Kopergaon within 24 hours. Merely the police approached him at his house at Chembur on 11.09.2014 and at their request he voluntarily moved with them to Kopergaon Police Station. There was no compulsion and the act was voluntary. No force was used and his right to move freely was also not curtailed at any moment. Therefore,

it cannot be said that his life and personal liberty was curtailed right from the moment he was approached at his house on 11.09.2015 between 6.00 to 7.00 a.m. The learned Advocate also endeavoured to point out that there was no breach of any law or directions given by the Supreme Court in the case of *D.K.Basu* and *Arnesh Kumar* (supra).

9. At the outset, it is necessary to observe that in fact, there is no dispute about the facts detailed herein above. To repeat, the police from Kopergaon Police Station approached the petitioner at his house in Chembur, Mumbai on 11.09.2014, at about 6.30 a.m. He was made to accompany them and was brought to Kopergaon Police Station on the same day at about 15.00 hours. He was formally shown to have been arrested at 15.45 hours on the same day i.e. 11.09.2014 and that he was produced before the Magistrate on 12.09.2014 at about 15.00 hours. The only dispute that has been raised on behalf of the Respondents is that though the petitioner was brought to Kopergaon, the

police had not arrested him and he had accompanied them to Kopergaon voluntarily. Therefore, during the period from 6.30 a.m. of 11.09.2014 till the time he was arrested at 15.45 hours, his life and personal liberty was not restricted. It is therefore necessary to ascertain as to whether it can be said that the petitioner was really arrested at about 6.30 a.m. of 11.09.2014. It is only if we reach such a conclusion that we would be able to record a finding that he having been produced before the Magistrate at 15.00 hours of the next day, his total detention would exceed 24 hours in violation of Article 22(2) of the Constitution of India.

10. The statements in the affidavit-in-reply filed on behalf of Respondent No.2 and the one filed by Respondent no.3 apparently take a usual stand in consonance with the submissions of their learned advocates saying that when the petitioner was not arrested on 6.30 a.m. on 11.09.2014, it cannot be said that there was any delay in producing him before the Magistrate. However, a careful reading of the police

papers annexed to the affidavit-in-reply filed on behalf of Respondent No.2 would make it abundantly clear that in fact the police party was sent to Chembur with the sole object of arresting the petitioner and his father. On 07.09.2014 Respondent No.3 addressed a letter to Respondent no.2 and had sought permission to send the police party to Chembur for effecting the arrest. The wireless message record at page 59 of the Annexures further shows that the permission granted by Respondent No.2 was communicated to Respondent No.3. It is thus apparent that right from inception the whole purpose of sending the police party to Chembur was to arrest the petitioner and even Respondent No.2 who is Superintendent of Police, Ahmednagar must be presumed to have accorded the permission for it at the request of Respondent No.3. If such is the state of affairs, the stand taken in the affidavits-in-reply and the submissions of the learned APP and the learned Advocate for Respondent No.3 falls to ground.

11. A lame attempt was made on behalf of Respondent No.3 by producing a Call Data Record to show that the petitioner was allowed to make and receive telephone calls during the period he along with the police party left his home at Chembur and arrived at the Kopergaon Police Station. In our considered view, this circumstance would at the most demonstrate that the police party had done some favour to the petitioner in allowing him to make calls. However, that will not militate against the actual removing of the petitioner from his house and taking him to Kopergaon without formally showing that he was arrested. This is apparently a convenient excuse resorted to by the concerned police to come out of the rigours of the law. If really the police were bona fide in following the due process of law, they could have easily formally arrested the petitioner immediately at about 6.30 a.m. of 11.09.2014 and could have produced him before the nearest Magistrate and thereby could have been able to get sanction of law for the period of transit. However, having not resorted to this procedure, they have clearly breached the mandate of clause 2 of Article

22 and have also violated the right of the petitioner to life and liberty guaranteed under Article 21 of the Constitution of India. It is indeed a blatant violation of fundamental right of the petitioner shocks our conscience.

12. Suffice for the purpose to observe that this case is indeed another example which demonstrates as to how police machinery in the State is either oblivious of the legal position or is emboldened to breach even the fundamental rights of the citizens. We are, making these observations with a sense of responsibility and we have strong reasons to say so. At least in three successive judgments of the Division Benches of this Court, a similar breach of fundamental rights of the citizens have been noticed and directions granting compensation to the petitioners and imposing costs on the State government have been passed. The cases of *Niraj Ramesh Jariwala*, *Shri. Sagar Balu Ubhe* and *Satish Vasant Salavi* (supra) are those three instances where this Court has come across similar violations of

the rights of citizens guaranteed under Article 21 and 22 of the Constitution of India. In spite of such repeated orders, we do not see any discernible change in the mind set of police machinery or for that matter the State Government. We have not been shown that any steps have been taken either by the State Government or the higher officials of the Police Department in setting their home in order. We do not propose to comment any further. We are satisfied that there is a blatant violation of fundamental rights of the petitioner guaranteed under Article 21 and 22 of the Constitution of India. Equally, there has been a breach of the directions of the Supreme Court in the case of D.K.Basu (supra) and we propose to proceed to address the request of the petitioner to pay compensation.

13. Obviously, there are no strict parameters, however, considering the fact that the petitioner was produced before the learned Magistrate at Kopergaon after about 32 hours and 30 minutes, in our view as a solace the petitioner is entitled to receive an amount of

Rs.50,000/- by way of compensation. In addition we also deem it appropriate to direct the State Government / Respondent No.1 to pay Rs.10,000/- to the petitioner as a cost of this petition.

14. As is mentioned above Respondent No.3 has obtained permission of Respondent No.2 while sending the police party to Chembur for arresting the petitioner. Therefore, it would be in the fitness of things to direct Respondent No.1 / the State Government and Respondent No.2 / the Superintendent of Police, Ahmednagar to first deposit / pay the compensation and costs to the petitioner and then take suitable steps to recover the amount of compensation from Respondent No.3 personally. Independently, even they can proceed against Respondent No.3 for a disciplinary action. Hence, we pass the following order.

ORDER

(1) The petition is allowed.

- (a) We hold that the detention of the petitioner at the instance of Respondent No.3 from 6.30 hours of 11.09.2014 to 15.00 hours of 12.09.2014 is illegal and in violation of his fundamental rights guaranteed under Article 21 and 22 of the Constitution of India.
- (b) We direct Respondent No.1 / State of Maharashtra to pay compensation of Rs.50,000/- to the petitioner together with interest @ 8 % per annum from the date of filing of this petition i.e. 13.02.2015 till realization of the entire amount of compensation together with interest. This amount shall be paid to him within four weeks from today.
- (2) Respondent No.1 / State Government and competent superior Police Officer shall hold an enquiry and fix the responsibility for the illegalities committed and shall take appropriate action against erring officials. The inquiry shall be completed within three months from today.

(3) Respondent No.1 / State Government shall pay to the petitioner Rs.10,000/- within four weeks as a cost of this petition or may deposit it in the Court.

(4) If the amounts of compensation and cost are deposited in the Court, the petitioner shall be entitled to withdraw it without furnishing any security.

(5) The Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

(S.S.SHINDE, J.)

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vmk/-