

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 239 OF 2010

1. Mahadeo s/o. Rambhau Kendre,
Age 60 years, Occu. Agriculture,
R/o. Dongarpimpala, Tq. Ambejogai,
Dist. Beed.
2. Satish s/o. Mahipati Kendre,
Age 33 years, Occu. Advocate,
R/o. Dongarpimpala, Tq. Ambejogai,
Dist. Beed.

....Petitioners.

Versus

1. The State of Maharashtra,
Through its Secretary Home
Department, Mantralaya, Mumbai.
2. The Superintendent of Police
Beed.
3. G.I. Bhume,
Police Inspector
Ambejogai (Rural),
Police Station, Ambejogai,
Dist. Beed.

....Respondents.

Mr. S.S. Bora, Advocate for petitioners.

Mr. S.J. Salgare, AGP for respondent Nos. 1 to 3.

**CORAM : T.V. NALAWADE AND
S.M. GAVHANE, JJ.**

Date : 27/09/2017

JUDGMENT : [PER T.V. NALAWADE, J.]

- 1) The petition is filed for giving direction to respondents to produce son of petitioner No. 1 namely Shrikrishna in the Court,

relief of habeas corpus nature. The relief is also claimed to give compensation of Rs. five lakh which can be recovered from respondent No. 3 for illegal detention of son of petitioner No. 1. Further, direction is also claimed for starting departmental inquiry against respondent No. 3 for illegal actions taken against son of petitioner No. 1. Both the sides are heard.

2) The aforesaid son of petitioner No. 1 was in service of Government of India, in Army. On 12.2.2010 F.I.R. was registered against the said son in Ambejogai Rural Police Station for the offences punishable under sections 354, 452 etc. of Indian Penal Code ('IPC' for short) at C.R. No. 13/2010. The said son applied for anticipatory bail in Sessions Court by filing Misc. Criminal Application No. 70/2010. On 5.3.2010 the learned Additional Sessions Judge gave the relief of anticipatory bail.

3) It is the case of petitioners that even when there was order of anticipatory bail made in favour of son of petitioner No. 1 dated 5.3.2010, on 7.3.2010 the said son of petitioner No. 1 was taken in custody and he was not released on bail. It is contended that no information was being given about the whereabouts of said son. The petition came to be filed in this Court on 8.3.2010.

4) Submission was made that in view of subsequent developments, the relief of only compensation remains in the matter. The son of petitioner No. 1 is now available.

5) By by of filing reply affidavit, it is contended by respondents that proceeding was initiated under section 110 of Criminal Procedure Code ('Cr.P.C.' for short) against Shrikrishna, son of petitioner No. 1 and he was released on bail as per the order made by the Special Executive Magistrate in the Chapter proceeding. It is denied that son of petitioner No. 1 was illegally detained by respondents. The relevant papers are produced along with reply affidavit.

6) The submissions made and the record show that on 12.2.2010 one lady had given report against Shrikrishna for aforesaid offences and after giving of the relief of anticipatory bail, some incidents took place. The submissions made show that on the basis of report given by Shrikrishna, crime was registered against the opposite side for offences punishable under sections 324, 149 etc. of IPC and the aforesaid lady was also made an accused in that case. It is contended that in said C.R.No. 17/2010, the persons shown as accused were arrested and as due to counter complaints, there was possibility of breach of peace, action like Chapter

proceeding under section 107 of Cr.P.C. was taken against the persons against whom C.R. No. 17/2010 was registered. It is the contention of the respondents that Shrikrishna was admitted in hospital for treatment, when he was required in C.R. No. 13/2010 but he absconded from there on 16.2.2010. It is contended that then the other side made complaints that Shrikrishna was threatening the other side and threats of life were given. Copies of these complaints dated 18.2.2010 and 20.2.2010 are produced. It is contended that in view of this record and conduct of Shrikrishna, report was submitted before Executive Magistrate to start proceeding under section 110 of Cr.P.C. and for that Shrikrishna came to be arrested on 7.3.2010 at about 4.00 p.m. under section 41 of Cr.P.C. It is contended that the learned Executive Magistrate made order of magistrate custody in the said report and so, there was no illegal detention.

7) The learned counsel for petitioners submitted that when anticipatory bail was granted to the son of petitioner No. 1 by Sessions Court, the police ought not to have taken steps like initiating Chapter proceeding in respect of the same incident. On this point, the learned counsel placed reliance on some reported cases like **2002 Bom.C.R. (Cri.) 128 [Surendra s/o. Ramchandra Taori Vs. State of Maharashtra through its Secretary],2003**

Bom.C.R. (Cri.) 1013 [Deelip Bhikaji Sonawane Vs. State of Maharashtra and Ors.], 2002 Bom.C.R. (Cri.) 578 [Baban Khandu Rajput Vs. State of Maharashtra & Ors.], 1998 (5) Bom.C.R. 191 [Chandrabhan s/o. Rama Dhengle Vs. Indarbai w/o. Chandrabhan Dhengle & Ors.] and AIR 1981 SC 674 [Gopalanachari Vs. State of Kerala]. The facts and circumstances of each and every case are always different. This Court in the case of **Surendra** cited *supra* had deprecated the practice of starting Chapter proceeding and it is observed that the power vested in the Executive Magistrate needs to be exercised with extreme caution and strictly in accordance with the procedure laid down for exercising the power. There cannot be dispute over the propositions made in the case cited *supra*. In the present matter, there is record of aforesaid nature against the petitioners. The record does not show that police acted partially against Shrikrishna. The report was made to start Chapter proceeding under section 110 (e) (g) of Cr.P.C. It can be said that if in the opinion of the police, the opponent is dangerous and he is likely to commit the offence which may disturb peace, they can take step like making proposal before Executive Magistrate. The power of the police cannot be disputed in this regard. Then the Executive Magistrate is expected to exercise the power given to it under the provisions of sections 107 to 124 of Cr.P.C. The power is judicial in nature and admittedly, order was

made by Magistrate to commit the applicant to magistrate custody when he was produced. The submissions made show that he was released on 8.3.2010, within one day from the date of arrest. Due to these circumstances, this Court holds that detention of the applicant by police after his arrest under section 41 of Cr.P.C. and further detention order of Magistrate cannot be called as illegal. There is no question of awarding compensation for such detention. In the result, the petition stands dismissed. Rule stands discharged.

[S.M. GAVHANE, J.]

[T.V. NALAWADE, J.]

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