

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

CRIMINAL WRIT PETITION NO. 216/2006

Sau. Radha w/o Subhash Maid

Age : 25 years, occ : household,

R/o Bori, Taluka Jintur,

District Parbhani

.. Petitioner.

Versus

1. The State of Maharashtra
Through Secretary (Home Department),
Mantralaya, Mumbai.
2. The State of Andhra Pradesh
Through Secretary (Home Department),
Secretariat, Hyderabad.
(Andhra Pradesh State).
3. The Inspector General of Police,
Maharashtra State, Mumbai.
4. The Superintendent of Police
District Shrikakulam.
(Andhra Pradesh State).
5. Shri Shriniwasrao,
Circle Inspector, Police Station,
Sompetha, Tal. Sompetha,
District Shrikakulam.
(Andhra Pradesh State)
6. District Superintendent of Police,
Parbhani.
7. The District Superintendent of
Police, Hingoli.

8. Mohsin Khan s/o Moinuddin Khan
Age : 58 years, occ : Service
As Police Inspector, Local Crime
Branch, Hingoli.
9. Circle Inspector,
Police Station, Ankapalli,
District Vishakapattanam.
(Andhra Pradesh State).
10. Director General of Police,
Andhra Pradesh,
Hyderabad (Andhra Pradesh
State).

.. Respondents.

Mr. S.S. Thombre, Advocate for petitioner.
Mr. R.V. Dasalkar, A.P.P. for respondent Nos.1, 3, 6, 7 and 8.
Mr. N.B. Suryawanshi, Advocate for respondent Nos. 5 & 9.
Mr. E.D. Sawant, Advocate for respondent No.8.

**CORAM : T.V. NALAWADE &
SUNIL K. KOTWAL,JJ.**

DATED : 28.07.2017.

JUDGMENT : (PER SUNIL K. KOTWAL,J.)

1. This Writ Petition is filed for the *habeus corpus* to direct the respondents to search and produce Subhash Santram Maid, who is the husband of petitioner, before this Court. A consequential relief of compensation of Rs. 10,00,000/- was

claimed for illegal detention of the petitioner's husband by respondents.

2. Respondent No.1 is the State of Maharashtra, respondent No.2 is the State of Andhra Pradesh, respondent No.3 is Inspector General of Police, Maharashtra State, respondent No. 4 is Superintendent of Police, District Shrikakulam-Andhra Pradesh, respondent No. 5 is Shri Shriniwasrao, Circle Inspector, Police Station, Sompetha, District Shrikakulam, respondent No. 6 is District Superintendent of Police of Parbhani, respondent No. 7 is District Superintendent of Police of Hingoli, respondent No.8 is Mohsin Khan s/o Moinuddin Khan, Police Inspector, Local Crime Branch, Hingoli, respondent No. 9 is Circle Inspector of Police Station, Ankapalli, District Vishakapattanam and respondent No.10 is the Director General of Police, Andhra Pradesh,

3. In brief, contention of the petitioner is that on 16-02-2006 at about 7.00 p.m. respondent No. 5-Shriniwasrao, Circle Inspector of Police Station, Sompetha, District

Shrikakulam (Andhra Pradesh State) and police from Maharashtra State visited to Bori where the husband of petitioner runs the business of goldsmith. They took away the husband of petitioner to Andhra Pradesh though no offence was registered against him either in Maharashtra or in Andhra Pradesh. At the time of this visit, Andhra Pradesh police as well as the police from Local Crime Branch, Hingoli informed the petitioner that Crime No. 6/2006, under Sections 302 and 397 of the Indian Penal Code was registered against the husband of petitioner. On 19.02.2006 respondent No. 5 and respondent No. 8 i.e. Mohsin Khan, Police Inspector, Local Crime Branch, Hingoli sent message to the petitioner and demanded 100 gm. gold for release of the husband of petitioner. Therefore, the brother of petitioner went to Hotel National Dhaba and gave 55 gm. gold to respondent Nos. 5 and 8. However, as the demand of 100 gm. gold was not fulfilled, the husband of petitioner was not released. Therefore, on 19.02.2006 the brother of petitioner went to Sompetha Thana, Andhra Pradesh for obtaining the bail of the husband of petitioner, because they learnt that the husband of petitioner was taken to Sompetha.

However, on enquiry, they learnt that no offence was registered against the husband of petitioner at Police Station, Sompetha.

4. As the respondents illegally detained the husband of petitioner, she filed Cri. M.A. No. 86/2006 before the Chief Judicial Magistrate, Parbhani for search warrant. In response to the notice served to respondent No. 8 in that proceedings, he appeared in the Court of Chief Judicial Magistrate, Parbhani and by submitting say informed that the husband of petitioner was shifted to Sompetha by Circle Police Inspector, Sompetha. In that proceedings Inspector of Local Crime Branch, Parbhani appeared and denied to have arrested the husband of petitioner. Nobody from Sompetha Police Station appeared before the Chief Judicial Magistrate, Parbhani though notice was served upon respondent No.5 Circle Inspector, Sompetha Police Station. Therefore, search warrant under Section 97 of the Code of Criminal Procedure was issued on 18.03.2006. On that date Circle Inspector of Police Station Ankapalli, District Vishakhapattanam, Andhra Pradesh sent fax message to the Superintendent of Police, Parbhani that the husband of

petitioner was arrested alongwith other accused in Crime No.59/2006, under Sections 41 and 102 of the Code of Criminal Procedure. As the whereabouts of husband of petitioner could not be traced out and as he was detained illegally by Maharashtra and Andhra Pradesh Police, the petitioner was constrained to file this petition for *habeas corpus* with consequential relief of compensation.

5. By filing reply affidavit, respondent No.7 denied all the allegations levelled by the petitioner. According to this respondent, Mohsin Khan, the then Inspector of Local Crime Branch, Hingoli never arrested husband of the petitioner. His contention is that Crime No. 106/2005, under Sections 395 & 397 of the Indian Penal Code was registered at Police Station Kurunda, Taluka Vasmat and respondent No.8 was investigating that crime. Crime No. 248/2005 was registered at Hingoli City Police Station, Crime No. 35/2005 was registered at Ansing Police Station, District Washim and Crime No. 179/2005 was registered at CIDCO Police Station, Nanded against unknown persons. During investigation, it revealed that the husband of

petitioner was involved in the above-said offences alongwith other accused. Therefore, when respondent No.8 had been to Bori for investigation, that time Andhra Pradesh police officials were present there and they were also investigating the similar crime. Some arrested accused persons by Andhra Pradesh police disclosed the name of the husband of petitioner as purchaser of the stolen property. Therefore, to avoid arrest in the above-said crime, the petitioner has filed this false Writ Petition. Respondent No.7 made it clear that in Criminal M.A. No.86/2006 Police Inspector of Local Crime Branch, Hingoli, by submitting say, made it clear that Subhash Maid (husband of petitioner) was taken in custody by Circle Inspector of Sompetha Police Station in connection with Crime No. 6/2006 registered at Sompetha Police Station. That time two constables from the Local Crime Branch, Parbhani accompanied Andhra Pradesh police. In brief, the contention of respondent No.7 is that, he was not involved in the arrest of the husband of petitioner.

6. Respondent Nos. 5, 2, 9 and 10 filed reply affidavits

and denied that on 16.02.2006 Andhra Pradesh police arrested the husband of petitioner. According to them, on that day police from Andhra Pradesh visited Bori, but they only inquired with the husband of petitioner and after inquiry, they left village Bori without effecting any arrest. Their contention is that the husband of petitioner was involved in various crimes registered at different Police Stations in Maharashtra as well as Andhra Pradesh. Therefore, initially on 18.03.2006 Assistant Sub Inspector of Ankapalli Police Station arrested Subhash Maid and recovered 50.240 gm. gold from his possession in Crime No. 59/2006, under Sections 41 and 102 of Cr.P.C. After knowing this, Circle Inspector, Sompetha approached the Judicial Magistrate, First Class of Sompetha and obtained transfer order of Subhash Maid. From Sub Jail Ankapalli, Subhash Maid was produced before Judicial Magistrate First Class, Sompetha and thereafter as per the order of J.M.F.C. Sompetha, Sompetha Police Station obtained police custody of Subhash Maid in Crime No.39/2005 and 6/2005, upto 09.04.2006. During investigation 91 gm. gold was recovered from Subhash Maid. When he was remanded in Judicial Custody on 10.04.2006,

Police Station Parvatipuram obtained custody of Subhash Maid from the Court. Thus, according to Andhra Pradesh police, they never illegally detained Subhash Maid. Thus, all respondents have denied the allegation of demand of gold by them from the petitioner.

7. Heard learned Advocate for the petitioner as well as learned Advocates for the respondents. Both of them argued in the line of their respective pleadings.

8. At the stage of hearing, the so called missing Subhash Maid filed affidavit before this Court and submitted that he was arrested by P.S.I. Mohsin Khan of Local Crime Branch, Hingoli on 16.02.2006 and he was kept in Savali Rest House at Parbhani. On the next day he was kept in B & C Rest House on the pretext of inquiry and thereafter he was taken to Nanded, Hingoli and Washim by police vehicle. On 17.02.2006 he was taken to Zero Phata, Taluka Wasmat and he was directed by police to call his father-in-law at National Dhaba. When his father-in-law reached to National Dhaba, Zero Phata, Hingoli

Road, the police authorities demanded gold. However, as his father-in-law handed over only 55 gm. gold to the police, he was not released and kept in the Rest House at Parbhani Railway Station. On the next day morning he was taken to Vishakhapattanam by train. He was also taken to Sompetha, District Shrikakulam in Andhra Pradesh and he was kept in Police Station. Police from Andhra Pradesh demanded gold from him. Police threatened to kill him in fake encounter. Therefore, on the request of deponent, he was allowed to talk to his family members. On 20.02.2006 his family members and one Advocate came to Sompetha. But they were informed that nobody was arrested at Police Station, Sompetha. As the police could not extract gold and cash from the deponent, he was taken to Ankapalli and on 18.03.2006 offence was registered against him at Ankapalli Police Station, subsequently at Parvatipuram-Shrikakulam and lastly at Police Station Sompetha. Thereafter he was transferred to Maharashtra on request by Maharashtra police in connection with the offence registered at Ansing, Taluka Washim and Nanded police stations. According to deponent, he was illegally detained by

police from 16.02.2006 till 18.03.2006.

9. No doubt, on the basis of above statement of Subhash Santram Maid, definite conclusion cannot be drawn regarding his illegal detention by Maharashtra and Andhra Pradesh Police.

10. However, in view of the reply affidavit submitted by Andhra Pradesh police officers, it is clear that for the first time Subhash Santram Maid was arrested by Andhra Pradesh police on 18.03.2006. After that he was produced before the concerned Judicial Magistrates and his further remands were obtained by different police stations from the different Courts. Thus, the detention of the accused from 18.03.2006 cannot become wrongful detention.

11. However, according to petitioner, her husband Subhash Maid was taken in custody by police of Andhra Pradesh alongwith the police from Local Crime Branch, Hingoli on 16.02.2006 at about 7.00 p.m. and thereafter continuously his

whereabouts could not be traced out despite of efforts by the petitioner and her relatives. Though Andhra Pradesh police officers have denied detention of Subhash Maid by them since 16.02.2006, the cat has come out of the bag in view of the say submitted by respondent No.8 before the Chief Judicial Magistrate, Parbhani on 18.03.2006 in Criminal M.A. No. 86/2006 filed by petitioner before the Chief Judicial Magistrate, Parbhani for search warrant under Section 97 of Cr.P.C. In the say submitted by respondent No.8 Police Inspector Mohsin Khan, Local Crime Branch, Hingoli, he has made it clear that on 16.02.2006 alongwith Circle Inspector of Sompetha Police Station, Andhra Pradesh, he had been to Bori for investigation and that time two constables from Local Crime Branch, Parbhani also accompanied them. In this say respondent No. 8 has clearly stated that Circle Police Inspector of Sompetha Police Station took Subhash Santram Maid in his custody and Andhra Pradesh police thereafter went away.

12. Considering this affidavit, on 18.03.2006 Chief Judicial Magistrate, Parbhani issued search warrant under

Section 97 of Cr.P.C. and directed Police Inspector of Nanalpeth Police Station to take the search of Sompetha Police Station for Subhash Santram Maid. After passing of this order, at 6.16 p.m. Circle Inspector of Police Station, Ankapalli Town, District Vishakhapattanam sent fax message to the Superintendent of Police, Parbhani and informed that Subhash Maid was arrested on 18.03.2006 alongwith other accused by police from Ankapalli Police Station and they were sent in Judicial Custody by Mandal Executive Magistrate, Ankapalli Town. This fax letter placed on record certainly indicates that rat is smelling somewhere. The say of respondent No. 8 filed in Criminal M.A. No. 86/2006 together with fax letter submitted by Circle Inspector, Ankapalli to Superintendent of Police, Parbhani indicate the correctness of the contention of respondent No.8 that on 16.02.2006 Subhash Maid was taken in custody by Andhra Pradesh police and that time Maharashtra police also helped them.

13. In addition to this, the petitioner has filed copy of inquiry report submitted by Sub-Divisional Police Officer,

Wasmat to Superintendent of Police, Hingoli on complaint application filed by petitioner. In that inquiry he recorded statement of Police Inspector Shrirang Nimmanwad, Local Crime Branch, Parbhani who has stated before the Inquiry Officer that on 16.02.2006 with the help of police constable Jafar and Sachin Mahure from Local Crime Branch, Parbhani, Andhra Pradesh police visited Bori and took away Subhash Maid with them. To that effect this officer also submitted complaint to Superintendent of Police, Parbhani.

14. Even Police Head Constable Jafar Mehmood, Local Crime Branch, Parbhani has stated before the Inquiry Officer that on 16.02.2006 alongwith Andhra Pradesh Police Officers and Police Inspector Shri Khan of Local Crime Branch, Hingoli (respondent No.8), he went to Bori and from there Subhash Maid was apprehended by Andhra Pradesh police and he was taken at first to Parbhani and thereafter to Hingoli. P.S.I. Kisan Dhotre, Local Crime Branch, Hingoli has given statement that on 16.02.2006 alongwith P.I. Khan (respondent No.8) he went to Bori and Subhash Maid was taken in custody by Andhra

Pradesh police and on 19.02.2006 Andhra Pradesh police met to Superintendent of Police of Hingoli. From the statement of this witness, it also emerges that at Wagarwadi Dhaba he had noticed Andhra Police police with arrested accused and later on he came to know that Andhra Pradesh police obtained 58 gm. gold from the brother-in-law of Subhash Maid at Wagarwadi Dhaba.

15. Thus, sufficient material is available on record which shows that with the help of Maharashtra police, the police officers from Andhra Pradesh detained Subhash Maid in their custody, without obtaining his further detention order from the nearest Magistrate. The record indicates that till 18.03.2006 Subhash Maid was detained by Andhra Pradesh police without any authorisation from the Magistrate. Thus, obviously the State of Maharashtra as well as Andhra Pradesh are responsible for illegal detention of Subhash Maid. If he was suspect criminal, then Police Officer ought to have arrested him after completing required formalities of arrest panchnama and within 24 hours they should have obtained further custody of Subhash

Maid from the nearest Judicial Magistrate. Thus, both States are responsible for illegal detention of Subhash Maid.

16. No doubt, the antecedents of Subhash Maid do not appear to be clean. However, as a citizen of India when his personal liberty is illegally infringed by Maharashtra and Andhra Pradesh Police Officers, the petitioner is entitled to compensation from both the State as claimed by her. Accordingly, we pass the following order.

ORDER

1. The Petition is allowed.
2. Both Governments viz. Maharashtra and Andhra Pradesh States do jointly and severally pay compensation of Rs. 1,00,000/- (Rupees One Lakh) to the petitioner or to Subhash Santram Maid, within 45 days from the date of this order.
3. If the amount is not paid within the above-mentioned time, the amount shall carry interest at the rate of Rs. 9 % per annum.

4. There will be liberty to both Governments to fix the responsibility on the respective police officers for illegal detention of Subhash Maid and the Governments can recover that amount from the respective officers.
5. Rule is made absolute in the above terms.

Sd/-

(SUNIL K. KOTWAL)
JUDGE

Sd/-

(T.V. NALAWADE)
JUDGE

vdd/