

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4922 OF 2017

Ravindra Nilkanth Kubal Petitioner
Vs.
State of Maharashtra & Others Respondents

Mr. Niranjan Mundargi with Mr. Vishal Kolekar for
the Petitioner.

Mr. J.P. Yagnik, APP, for the Respondent-State.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : DECEMBER 15, 2017

P.C:

1. The petitioner seeks the following reliefs from this

Court:-

“(a) This Hon'ble court pleased direct to the respondent no 1 for production of brother of the petitioner before this Hon'ble Court.

(b) During pendency of this petition this Hon'ble court may direct to the Juna Rajwada Police Station, Kolhapur for not taking any coercive action against the brother of the petitioner in C.R. No.273/2017.

- (c) *This Hon'ble Court pleased to appoint higher ranking police official for making detailed enquiry and investigation for the false allegations made against brother of the petitioner by hatching conspiracy by the Juna Rajwada Police hand in gloves with Respondent No. 5 & 6 with the help of respondent No.7. Any other order/direction may be given in the interest of justice.*
- (d) *Be pleased to award a suitable compensation to the present Petitioner on such terms and conditions as this Hon'ble Court may deem fit and proper and further be pleased to direct recovery of the said compensation from the pocket of the Respondent No.2 even such period as this Hon'ble Court may deem fit and proper;"*

2. The petitioner is the brother of one Shakti Nilkanth Kubal ("Shakti" for short). The petitioner is the younger brother and Shakti is the elder. There are two police stations and officers of both are impleaded as respondents. The other respondents include private parties.

3. We must at once clarify that Juna Rajwada Police Station, Kolhapur, Special Inspector General of Police, Kolhapur Range, Kolhapur, Superintendent of Police, Kolhapur and Sub-Divisional Police Officer, Kolhapur City, Kolhapur come into

picture in relation to an offence registered against Shakti at the said police station, whereas Navghar Police Station, Mulund (East), Mumbai, respondent No.8, has been arrayed as party-respondent in the circumstances which we would narrate shortly hereafter.

4. Shakti was working with Shamrao Vithal Co-operative Bank Ltd., Centralised Card Division Regional Office, Thane. He was employed as a Clerk. The said Shakti was residing at 501, Shingar Co-operative Housing Society Limited, Mithagar Road, Mulund (East), Mumbai – 400 081. He was serving the Bank from 1993.

5. Shakti received a call from Mobile No.9422517432 on 21-9-2017, at about 9:30 a.m.. That caller informed Shakti that C.R. No.273 of 2017 was registered against him at Juna Rajwada Police Station, Kolhapur, on 20-9-2017 alleging offence punishable under Section 354A of the Indian Penal Code (“IPC” for short).

6. Mrs. Chavan, Assistant Police Inspector (“API” for

short) attached to that police station directed Shakti to remain present for inquiry and investigation at the said police station on 22-9-2017.

7. The complainant/victim, whose name though stated in para 5 of the petition, aware as we are of the caution administered by the Hon'ble Supreme Court, we would not reveal or disclose it. The complainant/victim alleged that she had taken a hand-loan from Shakti, and on 3-9-2017 at about 12:30 p.m. approximately Shakti approached the complainant at her house and the incident, which is the foundation for registration for the crime, took place when the complainant was returning the money.

8. The complainant complains about advances and acts allegedly termed as indecent and further allegedly outraging her modesty were committed by Shakti but within the jurisdiction of the concerned police station at Kolhapur. In other words, the complainant/victim is a resident of Kolhapur. The petitioner may say that Shakti never worked at Shamrao Vithal

Co-operative Bank's branch at Kolhapur but we are not concerned with these details for on the petitioner's own showing the offence, as above, is registered.

9. We are mindful of the fact that a reference to the allegations in the FIR would require us to also take note of the averments in this petition but we refrain from expressing any final opinion on the rival contentions as far as this offence is concerned. Subsequently, a far more serious offence is alleged in the sense the FIR also makes the acts of Shakti punishable under Section 376(2)(n) of the IPC.

10. The petitioner would submit that his brother was working in the Bank but at the same time involved in Union's activities. He was the General Secretary of Shamrao Vithal Co-operative Bank Employees' Union. He had taken up the cause of the employees and was often at loggerheads with the Management. It is, therefore, an act of either intra-union rivalry or Management's attempt to book him in a false offence, but the fact remains that after this alleged incident, on the own showing

of the petitioner, Shakti was at Mumbai. From para 8 onwards, there is a reference made as to how the Bank was somehow or the other intending to book Shakti and cause serious prejudice to him and his career. In para 12 of this petition, this is what is stated:-

“12. That the petitioner submits that it is alleged by the complainant that on 03/09/2017 brother of the applicant was present in Kolhapur and he had committed alleged offence at about 12.30 PM at her residence. But petitioner submits that on 03/09/2017 brother of the petitioner was present in Badlapur and Mumbai. On 03/09/2017 brother of the petitioner was present in Mumbai and in the morning at about 8.56 am he left from his home to Badlapur Barvi Dam along with his friends and family members for short trip and he moved by his car, he returned back from Barvi Dam to home at 3.50 PM with all of them. Both the moments has been captured in the CCTV cameras which are installed in the home of brother of petitioner. Brother of the petitioner has taken photos from his iPhone on Barvi Dam with family members, the said photos shows location and date where he was present. Copy of the said photos and other papers on the alleged day of incident are hereto annexed and marked as exh. “C”.

11. Then in para 13, the petitioner states that on 10-10-2017 a police team/party from Juna Rajwada Police Station, particularly Mrs. Chavan, API, and other two police

officials from Navghar Police Station visited the residence of Shakti. They informed him about the offence registered against him but did not arrest him. They left without arresting him and that is evident, according to the petitioner, from the CCTV footage.

12. Then, the petitioner himself says that on 22-11-2017, the Bank terminated the services of Shakti. Once this letter was served on 23-11-2017 at about 2:15 p.m., the police party from Kolhapur along with officials of Navghar Police Station, Mulund, Mumbai visited the residence of Shakti. The petitioner resides in a property or a flat or a building opposite Shakti's residence. The officials informed Shakti about his arrest and equally the petitioner. The police party is stated to have escorted Shakti to Navghar Police Station, Mulund, Mumbai. The petitioner and his family on becoming aware of this incident and finding that Shakti was being interrogated in an adjacent room by the police party, later on say that he was informed about Shakti's arrest by the Kolhapur police officials. However strangely, this police station says that they have not arrested Shakti and he is not in

their custody but was taken to Navghar Police Station. At Navghar Police Station it is stated that the police party from either of these police stations did not take any steps to arrest Shakti, he was allowed to go, whereafter he has gone missing. Thus, Shakti has not been seen after 23-11-2017. That is how the writ of habeas corpus is claimed so as to obtain production of the said Shakti. On 27-11-2017, this petition was filed and when it was moved urgently before us on 28-11-2017, after hearing Mr. Niranjana Mundargi and Mr. J.P. Yagnik, we passed the following order:-

- “1. Mentioned. Not on board. Taken on board.*
- 2. The petitioner has sought circulation of this matter out of turn and urgently, because he says that his brother has been taken away by the Police, namely the officials attached to the Juna Rajwada Police Station, Kolhapur.*
- 3. That was purportedly in connection with an F.I.R. registered at the said Police Station.*
- 4. Mr. Mundargi would submit that the petitioner is worried about his brother's whereabouts and though the Police entered the house and took him away, now it is claimed that they know nothing about his movements. Mr. Mundargi's argument is that it is out of belief that the Police Machinery completely prepared as it is, visits the house of the petitioner at Mulund, Mumbai for the*

offence registered at Juna Rajwada Police Station, Kolhapur, but does not take him in custody and allows him to go wherever he desires and in whichever way he wants to proceed. That is precisely the complaint and there is some cover-up, but the fact remains that, according to Mr. Mundargi, the brother of the petitioner has not returned home.

5. *On such a Petition, in the morning session, we directed notice to be issued to the Public Prosecutor's office so that the Public Prosecutor can obtain instructions at least on telephone. Mr. Yagnik, learned APP, on instructions, placed a report in the form of a communication from Juna Rajwada Police Station, Kolhapur addressed to the Public Prosecutor's office.*

6. *Mr. Yagnik states that a perusal of this communication would indicate that the Police machinery proceeded from Kolhapur and visited the house of the petitioner and his brother at Mumbai. Thereafter, the brother of the petitioner, accompanied by his wife, came to Navghar Police Station. The petitioner is aware that some inquiries were to be made and that is why his brother was called at the Police Station. The Police machinery has stated that the petitioner's brother thereafter left the Police Station. They have not placed him under arrest. The instructions that Mr. Yagnik receives are that the officials attached to both Police Stations, namely, Navghar Police Station, Mulund, Mumbai and Juna Rajwada Police Station, Kolhapur, have not detained or arrested the brother of the petitioner.*

7. *In such circumstances, presently, no ad-interim orders, but we direct Mr. Yagnik to take detailed instructions and file an affidavit and if possible, disclose the whereabouts of the petitioner's brother or at least place on record the attempt made to assist the petitioner in that behalf. We post this matter on 5th December,*

2017.”

13. Then, on 5-12-2017, we passed the following order:-

“1. This matter was placed in the morning session, but in the absence of the Investigating Officer from the Juna Rajwada Police Station, Kolhapur, Mrs. Deshmukh, learned APP, was unable to make a positive statement.

2. The matter was therefore placed in the afternoon session so as to enable Mrs. Deshmukh to seek instructions from this Police official.

3. Now, on the second call, it is revealed that the Investigating Officer from Juna Rajwada Police Station, Kolhapur is present. Written instructions have been handed over to Mrs. Deshmukh by this Officer in our presence.

4. We do not wish to comment on these written instructions contained in the communication/letter dated 5th December, 2017. All that we expect from the concerned Police officials and before making any serious accusations, particularly against the petitioner, that let there be an affidavit affirmed by the concerned Police official so that eventually, he or she takes responsibility for the statements made on oath. It is agreed that such an affidavit would be filed within a period of one week from today. Let an affidavit be filed with a copy served in advance on the petitioner's Advocate. The Petition is posted on 13th December, 2017.”

14. We expected from the concerned police official and before making any serious accusation against the petitioner and

his brother that an affidavit be filed so that we do not have allegations being made by police officials against the petitioner and counter allegations by the petitioner.

15. Thereafter, a detailed affidavit has been filed by Smt. Sarojini Suryakant Chavan, API, attached to Juna Rajwada Police Station, Kolhapur.

16. She says that each and every allegation in the petition is denied, save and except what can be termed as admitted expressly. In para 3 of this affidavit, it is stated that at the instance of the complainant the offence was registered. The offence was registered against the said Shakti by the Juna Rajwada Police Station. A copy of the FIR is annexed as Annexure "A" to this affidavit, and during the course of the investigations Notice under Section 41A of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short) was personally served upon Shakti by the Deponent of this affidavit at his Mumbai residence. He was informed to remain present personally on 16-10-2017 for inquiry at Juna Rajwada Police Station at

Kolhapur. At the time when the Notice was served on accused Shakti, he was arguing loudly and the police personnel of Navghar Police Station, Mulund, Mumbai were present. Even Shubhangi (wife of Shakti) was present.

17. Shakti did not remain present for inquiry on 16-10-2017 or thereafter. The complainant recorded her statement under Section 164 of the Cr.P.C., upon which Section 376(2)(n) of the IPC was added in the FIR.

18. After adding that section, with the permission of the Superintendent of Police, Kolhapur and with prior permission from the Deputy Commissioner of Police, Zone-VII, Mumbai, the Deponent along with police personnel from Navghar Police Station visited the house of Shakti. When they reached the house, Shakti's wife, mother and children were present. Shakti was not present at home. His wife Shubhangi made phone call to Shakti and then he reached home with one Satyawand Dalvi. The relatives of Shakti gathered and made a hue and cry and hence to avoid law and order situation, the police party from

Kolhapur and others proceeded to Navghar Police Station along with the staff of that police station. The family members and the relatives followed. After it was informed that a serious offence has been registered against Shakti, one Advocate Mr. Singh and Shakti's colleague arrived at Navghar Police Station. They started questioning the Deponent of this affidavit. She apprised them of the seriousness of the situation, the offence in which Shakti was booked and the nature of the statement of the complainant, but taking advantage of the crowd and the chaos Shakti ran away from Navghar Police Station.

19. The search for Shakti is going on. A letter dated 30-11-2017 was addressed to the DCP, Zone-VII, Mumbai to search for the accused. A wireless message was sent to all police stations in Maharashtra about Shakti, who is an accused.

20. It is then stated that Call Data Record (CDR) of Mobile Number {9819401818} of Shakti was received which shows that on 23-11-2017, namely, the date of his disappearance as well as on the subsequent date (24-11-2017) the Cell Phone of Shakti was in operation. The CDR further

denotes that Shakti called up one Vikas Keraba Patil, a resident of Kolhapur and driver of a private vehicle and whose services were utilised by Shakti while he was visiting Kolhapur, that there was a conversation. Mr. Vikas Patil gave his statement to the police on 1-12-2017. He claimed to have known Shakti since 2011 and identified Shakti as the General Secretary of Shamrao Vithal Co-operative Bank Employees' Union. The said Vikas stated that he also knows the complainant and he knew that she has made serious allegation of rape against Shakti. Shakti inquired from Vikas about the rape case and was also seeking his assistance so that a prestigious person would intervene.

21. It is in these circumstances, the Deponent says that the accused Shakti is an ordinary resident of Mulund, Mumbai and since the date of his disappearance, in order to avoid his arrest, he has been hiding himself. The Deponent of the affidavit states that a continuous vigil has been maintained from 2-12-2017 and prior thereto and thereafter as well visits have been made to the home of the accused. The place where Shakti

resides with his family was found to be locked. The neighbours had no information about Shakti. There are other persons who refused to give statement and have not co-operated with the police. Then, on 3-12-2017 the police party visited the residence of the petitioner before us but equally his house was closed. An entry was made in the Station Diary on 4-12-2017 of Navghar Police Station.

22. Thus, this Deponent makes a serious allegation that even the CCTV footage would reflect that Shakti is trying to evade arrest and further interrogation. There is no substance in the allegation of kidnapping of Shakti and made by the petitioner. The Deponent of this affidavit says that instead of co-operating with the police and giving statements, the relatives are avoiding any meeting with the police party. There are further details revealed on internal pages 7 to 9 of the affidavit.

23. Once a serious allegation is made by the Deponent of this affidavit that Shakti ran away from Navghar Police Station and is now hiding himself in order to avoid arrest, that we repeatedly granted time to Mr. Mundargi and equally to the

learned Advocate on record to take instructions from the petitioner as to whether any order on this petition is being invited or the petitioner would not press this petition any further.

24. However, the counsel, on taking instructions, states that the petitioner denies each and every allegation in the affidavit in reply and maintains that it is the police party from either police stations who have caused disappearance of his brother and are refusing to assist him in tracing the brother. The petitioner maintains that he has no role to play insofar as the allegations and offence against Shakti nor he is harbouring him or assisting him otherwise to avoid arrest.

25. On a perusal of the petition and all the annexures thereto and equally the affidavit in reply, the efforts of the police machinery, we do not see how we can proceed on the petitioner's case any further. The petitioner presents only but one version with regard to the employment, life and character of his brother. The petitioner though stating to be the brother of Shakti has revealed all the personal details with regard to

Shaktil, his employment, his involvement in Union activities, his confrontation with the Management, the disciplinary and departmental action against him, etc.. The petitioner knows that there is an offence alleged and registered against Shaktil at Juna Rajwada Police Station. The petitioner knows that his brother was in Mumbai when the police party visited the residence of Shaktil. With all these details being present to his mind, he still accuses the police party of causing the disappearance of his brother or being responsible for his brother hiding himself. For all we know from the documents produced before us and copies of which are annexed by the Deponent of the affidavit in reply that it may be the petitioner who is assisting Shaktil together with the family members in avoiding arrest. We do not think that this petition is by an innocent brother and who seeks the assistance of the police machinery so as to ensure production of his elder brother Shaktil. It is not as if the younger brother is pained and anguished and together with the family is in deep sorrow because his elder brother has suddenly gone missing. A missing complaint is also not pertinently lodged. Conspicuously,

the story projected of the brother going missing is only after the crime was registered and when the complainant/victim gave her initial statement which was further clarified by her. By her two statements attributing a role to Shakti, resulted in the crime being registered against Shakti. In such circumstances, it would be unsafe and improper to proceed in our limited jurisdiction and issue any writ, as prayed for.

26. We do not think that the petitioner and his family is innocent, for equally they are stated to be involved in ensuring that Shakti is not arrested and produced before the Competent Criminal Court.

27. In the circumstances, we dismiss the writ petition.

28. We would highly appreciate, in the given facts and circumstances, if the superior officers of the concerned police stations take such steps as are permissible in law for their police team categorically states that they proceeded to arrest Shakti, they visited his premises, Shakti was present and when they were to arrest him, with a view to avoid any untoward situation

and law and order problem, Shakti was taken by the other police party to Navghar Police Station and from there he escaped. If the police officials are giving a version of the accused absconding from the premises of a police station, then, it is but the duty of the superiors to probe such incident further and, if necessary, bring the guilty police officials to book. They can be proceeded departmentally and otherwise as well in allowing an accused to abscond or run away from the precincts of a police station. We say nothing more.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)