

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

CRIMINAL WRIT PETITION NO. 331 OF 2015

Atul S/o Rajaram Shelke
Age : 28 years, Occu. Agriculture,
R/o. Narayangavan, Tq. Parner,
Dist. Ahmednagar.

... Petitioner

VERSUS

1. The State of Maharashtra,
Through Secretary, Home Department,
Mantralaya, Mumbai-32.
2. The Inspector General of Prison,
Maharashtra State,
Jail Division, Pune.
3. The Jail Superintendent,
Sub Jail, Ahmednagar.
4. The Collector,
Ahmednagar District, Ahmednagar.
5. The Police Station Officer,
Kotwali Police Station,
Ahmednagar.

... Respondents

.....
Mr Nitin V. Gaware, Advocate for the petitioner
Mr M. M. Nerlikar, APP for respondent/State
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**CORAM : S. S. SHINDE &
A. M. DHAVAL, JJ.**

RESERVED ON : 12.12.2017.
PRONOUNCED ON : 23.01.2018.

JUDGMENT (PER A. M. DHAVALÉ, J.) :-

1. The petitioner under article 14, 21 & 226 of the Constitution of India seeks directions in the nature of writ of mandamus against the State and Inspector General of Prison to conduct thorough investigation with regard to the custodial torture and atrocities by the Jail authorities and inmates at Ahmednagar against his father and brother.

2. The facts indicate that Rajaram, father of the petitioner and his son Rahul, brother of the petitioner were under-trial prisoners as accused in C.R. No. 88/2010 registered with the Parner Police Station and were in Jail at Ahmednagar. His father Rajaram was patient of Diabetes and hyper tension. He was advised a nutritious diet. The jail authorities did not provide him such diet as prescribed by the Civil Surgeon whereby the health of Rajaram was deteriorated. On application presented by Rajaram before Sessions Judge on 07.08.2014, the directions were issued to the Superintendent of Jail to provide medical aid and diet as prescribed but it was not followed. The second allegation is about assault. As Rajaram was agitating his grievances before Inspector General of Prison (R2), Jail

Superintendent - Gawade (R3) and other staff had threatened him. They were also demanding bribe for providing him diet. During the said period, one Baban Salve committed suicide in jail due to custodial torture by Jail Superintendent – D. G. Gawade and B. B. Shirke and other jail authorities. Rajaram had reported the matter dt. 11.12.2014 to Sub-Divisional Officer, Ahmednagar and Kotwali Police Station. The jail authorities were annoyed by the act of Rajaram and at their instigation hardcore criminals Baban Ghawate, Prashant Kohli and Babasaheb Nangre launched assault on his father and brother on 02.02.2015. They were brutally assaulted and threatened. The Jail Superintendent again called and threatened Rajaram. There was danger to Rajaram and Rahul at the hands of jail authorities. Thereafter, Rajaram and Rahul were sent to Yerwada jail. The police of Kotwali Police Station failed to take cognizance of complaint received against the jail authorities. Hence, this petition dt.09.03.2015. On 17.04.2015, it was directed that one JMFC nominated by Sessions Judge, Ahmednagar would visit the sub-jail and would make inquiry and submit report. Learned JMFC submitted his report through the Sessions Judge. Meanwhile, Inspector of General (Prison) has also conducted inquiry and produced relevant documents.

3. It may be stated here that, both Rajaram and Rahul were transferred to Pune and thereafter they were released on bail. As such, apprehension if any to their life and limb was over long back.

4. Heard Shri. Nitin Gaware, learned counsel for the petitioner and Shri. M. M. Nerlikar, learned APP for the State.

5. The papers on record, the affidavit in reply of respondent no. 3 along with relevant documents, circulars and the report of JMFC as well as Addl. Inspector General of Prison disclose following facts.

- (i) Rajaram and Rahul were arrested in C.R. No. 88/2010 of Supa Police Station on 25.11.2010.
- (ii) Rajaram was a diabetic patient, the Civil Surgeon had recommended him medicine Gamer 2 and special diet.
- (iii) As per say of respondent no.3-Superintendent (District Prison), special diet is permissible only for patients suffering from serious illnesses like Cancer, AIDS & TB.

6. He has filed Maharashtra Prisons (Prison Hospital) Rules, 1970, which show that prisoners desirous of having extra medical facilities in respect of diet or clothing may be allowed to supplement

them at their own cost, provided the Medical Officer considers it necessary in the interest of the health of the prisoner. We therefore find that there is no substance in the complaint that in spite of recommendation of Doctors, Rajaram was not supplied with special diet for diabetes. He was offered the supply of diet at his own costs. Besides, as held by one of us (A.M. Dhavale, J.) in State v. Vikramsing Choudhary [Criminal W.P. No. 718 of 2016] decided on 10.11.2017, Rajaram could have applied to the trial Judge for home food as he was in custody of the trial Judge u/s 167 Cr.P.C. Respondent No. 3 has filed a list of food items provided to the jail inmates with averments that those were sufficiently containing proteins as per requirement. It may be stated that, for Diabetes, what is necessary is control over sugar intake from sweet food items and use of diabetic medicines. Considering the facts and provisions of law, we find no substance in the complaint that *in spite of* recommendation of Doctors, Rajaram was not supplied with special diet as prescribed by the Civil Surgeon.

7. As far as suicide of Baban Salve is concerned, it is submitted that the said matter was separately dealt with and it need not be considered in this case.

8. The petitioner alleged that Rajaram being witness/complainant in Baban Salve's suicide, the jail authorities instigated hardcore criminals Baban Ghawate, Prashant Koli, Nangre, Lashkare and others to launch assault on Rajaram and his son Rahul.

9. Smt. Swati Sathe, Dy. Inspector General of Prison has filed affidavit-in-reply. Besides, there is report of Additional Director General of Police & Inspector General of Prison. He has held inquiry into the allegations against Superintendent D. G. Gawade. He found no substance in the allegations regarding corrupt practices. He has filed report submitted by Dy.S.P. (Vigilance Cell), which shows that after recording statements and collecting documents of several persons, he found no substance in most of the allegations made by the petitioner against the jail authorities. He has recorded statements of four under-trial prisoners, besides Rajaram and Rahul and several jail guards. He made confidential discreet inquiry with jail inmates. His report shows that, Rajaram was arrogant and was making complaints against everybody and was picking up quarrels with other inmates. His inquiry reveals that, one Chouranginath had admitted that he had given 3-4 blows of leather belt to Rajaram as he had spoken arrogantly with him and rushed to assault. He also admitted that, Chouranginath had given blow of hand on his ear and there was

bleeding from the ear. This incident had taken place on 02.02.2015. Thereafter, said Chouranginath and Mohan Lashkare were transferred to sub-jail at Newasa on 03.02.2015. The statement discloses that, Pravin Popat Kharchand, Sonu Satyawar, Sonkamble, Chouranginath Lashkare at one side and Rajaram and Rahul from other side had quarrel, verbal exchange and scuffling. The jail authorities had tried to separate them and pacify them. The inquiry does not reveal that there was any instigation by Superintendent-Gawade or other jail guards to the assailants for assaulting Rajaram and Rahul. The Inquiry Officer after inquiry noted that there was negligence on the part of Jail Superintendent in not having control over the situation which resulted into the assault and, therefore, the disciplinary action was initiated against Superintendent - Gawade.

10. It is the duty of the Jail Superintendent to see that in the first place the jail inmates are not assaulted by jail guards or other inmates. All the jail inmates should be protected from any threat to their life or limb. If there is assault, there should be immediate action to prevent further damage. It was the duty of the Jail Superintendent to refer the injured persons to Medical officer, obtain medical certificate and submit a report about the said incident to the Magistrate, in whose court the cases against injured and the

assailants were pending. It is for the Judicial Magistrate to make inquiry and to take necessary action against such assailants. The record shows that, though Rajaram and Rahul were assaulted by the inmates, respondent no. 3 has not provided sufficient protection to them and after the injuries they were not provided with medical aid.

11. The record shows that, Rajaram was of quarrelsome nature and had disputes with jail authorities, but there is no material to show that the jail authorities had assaulted him. As far as the negligence noted above is concerned, the jail authorities have decided to take proper disciplinary action against the jail Superintendent Mr Gawade. Considering the facts of the present case, since Rajaram and Rahul are now free birds, they can go to the Police Station and prosecute appropriate remedies against the assailants. Since the jail authorities were not the assailants but only negligent and disciplinary action is initiated against Superintendent - Gawade, no further directions in this regard are necessary. However, in order to avoid such negligence in future, we wish to pass following directions to all the Jail Superintendents.

- (i) The jail inmates are in the physical custody of Jail Superintendent and under-trial prisoners are in the

constructive custody of Judicial Magistrate/Sessions Judge. It is their responsibility that except restriction on the liberties, their other fundamental rights should not be violated. There should not be any ill-treatment or harassment to them and there should not be any assault on them either by the jail authorities or by the other inmates which may threaten their life or limb. All precautions shall be taken by Superintendent of Jail to prevent such incidents of assault even in cases where the victim may be arrogant or of quarrelsome nature.

- (ii) In case, any accused person is arrogant or indulges in abusing or assault, the Jail Superintendent may report about the same to concerned Judge and may also take appropriate action as per jail manual but he cannot be subjected to physical assault by the jail authorities.
- (iii) In spite of taking all precautions, if any jail inmate is subjected to assault by jail guard or other inmates, he should be immediately provided medical aid in Jail Hospital. If the injuries are serious, he should be taken to Civil Hospital or any other hospital for proper

treatment. The report about the said assault should be submitted to the Judges before whom the cases of victim as well as the assailants are pending. If necessary, the victim should be immediately produced before the concerned Judicial Magistrate who can record his FIR and direct investigation. Care should be taken to see that the victim and other witnesses are not subjected to any pressure so as to refrain them from disclosing the truth.

- (iv) The Jail Superintendent shall immediately take steps to see that the members of assailant group and the members of victim group are not kept in the same barrack. In case there is complaint of assault by jail guards, the Jail Superintendent shall report the fact to his superior and shall also see that the same Jail Guard is not given duty in the barrack where the victim and other witnesses are kept.
- (v) The Judicial Magistrate while recording the complaint of the victim and statement of witnesses should take utmost precaution to see that they are not under fear. They

should be assured that they would be kept away from the assailants and they should be free to disclose the true facts. The inquiry in such matters should be conducted expeditiously within a very short time and as far as possible the cases of such assaults on jail inmates should be expeditiously decided on priority basis.

- (vi) Copy of this judgment may be forwarded to Director General of Prisons for circulation to all the Jail Superintendents for proper implementation.

12. With these directions, we hold that no further action is necessary in the matter. Hence, the petition deserves to be dismissed and is accordingly dismissed.

[A. M. DHAVAL]
JUDGE

[S. S. SHINDE]
JUDGE

Punde