

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.2504 OF 2017

Vinayak Vasudev Bhosale
Age 43 years, Indian Inhabitant,
residing at Flat No.27, Shivaji
Nagar, Govandi,
Mumbai 400 043

....Petitioner

V/s.

The State of Maharashtra
at the instance of Airport Police Station
Mumbai

....Respondent

Mr. V.J.Bhanushali, Advocate for Petitioner.
Mrs. A.S.Pai, APP for the Respondent-State.

**CORAM :- R.M.SAVANT &
SANDEEP K. SHINDE, JJ.**

DATE :- 14TH FEBRUARY, 2018.

JUDGMENT :- (Per Shri Sandeep K. Shinde, J.)

Heard the learned counsel for the Petitioner and the
learned APP for the State.

2 The provision of Section 151 of the Code of Criminal
Procedure, 1973 empowers the police officer to arrest the person to
prevent the commission of cognizable offence without order from
the Magistrate and without a warrant when it appears to him that
the commission of an offence cannot be otherwise prevented. Sub-

section (2) does not permit to detain person arrested under Sub-section (1) for a period extending 24 hours from the time of his arrest unless his further detention is required or authorised under any other provisions of the Code of Criminal Procedure, 1973 or of any other law for the time being in force.

3 Vide Maharashtra Act 7 of 1981 (With effect from 27.8.1980) after sub-section (2) following sub-section has been inserted:

“(b) after sub-section (2), the following sub-section shall be inserted, namely:—

(3) (a) Where a person is arrested under this section and the officer making the arrest, or the officer in charge of the police station before whom the arrested person is produced, has reasonable grounds to believe that the detention of the arrested person for a period longer than twenty-four hours from the time of arrest (excluding the time required to take the arrested person from the place of arrest to the Court of a Judicial Magistrate) is necessary by reason that—

(i) The person is likely to continue the design to commit, or is likely to commit, the cognizable offence referred to in sub-section (1) after his release; and

(ii) the circumstances of the case are such that his being at large is likely to be prejudicial to the maintenance of public order,

the officer making the arrest, or the officer in charge of the police station, shall produce such arrested person before the nearest Judicial Magistrate, together with a report in writing stating the reasons for the continued detention of such person

for a period longer than twenty-four hours

(b) Notwithstanding anything contained in this Code or any other law for the time being in force, where the Magistrate before whom such arrested person is produced is satisfied that there are reasonable grounds for the temporary detention of such person in custody beyond the period of twenty-four hours, he may, from time to time, by order remand such person to such custody as he may think fit:

Provided that, no person shall be detained under this section for a period exceeding fifteen days at a time, and for a total period exceeding thirty days from the date of arrest of such person."

Thus, from the provisions of the aforesaid Section, it transpires that a person arrested under Section 151(1) cannot be detained by the Police Officer in his custody for more than 24 hours unless his further detention is authorised the Magistrate.

4 Herein Petitioner was arrested on 21.3.2017 at 4 p.m. under Section 151(1) and the concerned police officer was of the view that the Petitioner was likely to commit the cognizable offence after his release and as such, sought his further detention. The Petitioner was, therefore, produced before the learned Magistrate, 66th Court, Andheri, Mumbai on 22.3.2017 in S.D. No.25 of 2017 with a prayer that the police officer may be permitted to further detain him in exercise of the powers under Section 151(3) of the Cr.P.C.

5 The learned Magistrate vide order dated 22.3.2017 declined to grant further custody and as such, passed the following order;

“3 Considering submissions made before me, perusal of application, I find that further detention of detainee, is not warranted, since mere apprehension has been recorded by the Police Officer, without substantial proof that, he will commit a cognizable offences, as alleged. Even the history of cases cited by the police officer would self explanatory that, he did not commit any such offences earlier in Mumbai, as sought for. Hence, detainee shall be released upon his undertaking that, he shall not visit the vicinity of Airport Police Station and shall maintain peace and harmony within vicinity. Detainee shall refrained himself from visiting in the vicinity of the Airport police station.”

6 The Petitioner being aggrieved by the order dated 22.3.2017 as re-produced hereunder has preferred this Writ Petition.

7 Mr. Bhanushali, the learned counsel for the Petitioner would submit the order dated 22.3.2017 was uncalled for and without jurisdiction and specially obtaining undertaking from the Petitioner, while refusing further detention as sought. Mr. Bhanushali would also submit the undertaking dated 12.3.2017 obtained from the Petitioner interferes with the right of free

movement of the Petitioner. He would, therefore, submit part of the order directing to obtain an undertaking and undertaking dated 12.3.2017 may kindly be quashed and set aside.

8 We are in agreement with the submissions of the learned counsel for the Petitioner. The order dated 22.3.2017 passed by the learned Metropolitan Magistrate, 66th Court, Andheri, Mumbai and the consequent Undertaking dated 12.3.2017 was without jurisdiction and hence, not sustainable in law.

In the first place Section 151(3) of the Maharashtra Amendment does not empower the Magistrate to release the person conditionally and secondly, does not empower the Magistrate to restrict the movements of detainee while exercising the powers under the said provision. In the same way, the Magistrate was not authorised to direct the detainee to give an Undertaking, for want of jurisdiction and powers in that regard.

9 In the result, the Petition is partly allowed and the following order is passed:

- (i) The Undertaking dated 12.3.2017 obtained from the Petitioner and filed in the Court of 66th Metropolitan Magistrate Court, Andheri, Mumbai in S.D.No.25 of 2017 is hereby quashed and set

aside.

(ii) That part of the order namely,

“.....Hence, detainee shall be released upon his undertaking that, he shall not visit the vicinity of Airport Police Station and shall maintain peace and harmony within vicinity. Detainee shall refrained himself from visiting in the vicinity of the Airport police station.”

is hereby quashed and set aside.

10 The Petition is, accordingly, disposed of.

(SANDEEP K. SHINDE, J.)

(R.M.SAVANT, J.)