

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

CRIMINAL WRIT PETITION NO. 414 OF 2010

Deepak S/o Tulshiram Jaiswal
Age: 58 Years, Occu.- Agri,
R/o: Vasant Nagar, Pusad,
Tq. Pusad, Dist. Hingoli.

... **Petitioner**

Versus

1. State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai.

2. The Superintendent of Police,
Hingoli, District – Hingoli.

3. Mr. M.A. Rauf,
Police Inspector,
Local Crime Branch,
Hingoli, District – Hingoli.

... **Respondents**

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Mr. Sachin C. Sarda, Advocate for the Petitioner.

Mrs. D.S. Jape, A.P.P. for Respondents-State.

Mr. N.R. Shaikh h/f Mr. J.R. Shaikh, Advocate for the Respondent no.3.

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**WITH
CRIMINAL APPLICATION NO. 78 OF 2012**

Usha W/o Deepak Jaiswal
Age: 42 Years, Occu.- Household,
R/o: Vasant Nagar, Pusad,
Tq. Pusad, Dist. Yawatmal.

... **Applicant**

Versus

1. State of Maharashtra,
Through Rural Police Station,

Hingoli, District – Hingoli.

2. The Investigation Officer,
Mr. M.A. Rauf,
Rural Police Station,
Hingoli, District – Hingoli.

... Respondents

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Mr. S.S. Patil, Advocate for the Applicant.
Mr. Mr. S.B. Yawalkar, A.P.P. for Respondents-State.

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**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.**

**DATE OF RESERVING THE JUDGMENT : 26.03.2019
DATE OF PRONOUNCING THE JUDGMENT : 09.07.2019**

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JUDGMENT :- (*Per: Mangesh S. Patil, J.*)

Heard. Rule. Rule is made returnable forthwith. Learned A.P.P. and the learned advocate for the respondent no.3 in writ petition who is the respondent no.2 in the Criminal Application waive service. At the request of both the sides the matter is heard finally at the stage of admission.

2. In the writ petition, the petitioner who is one of the accused in Crime No.157 of 2009 registered with Hingoli Police Station for the offences punishable under Sections 420, 482, 487 of the Indian Penal Code, Sections 3 and 7 of the Essential Commodities Act and under Sections 3 (7) and (8) of the Motor Vehicles Act is praying for compensation in public law for the alleged breach of his fundamental right to life and personal liberty at the

hands of the respondent no.3 who was investigating the crime, for not obeying the direction of this Court granting him ad interim anticipatory bail and instead arresting him and detaining him illegally till he was produced before the learned Magistrate on the next day who granted him bail. He is also seeking that an inquiry be initiated against the respondent no.2 who was then the Superintendent of Police, Hingoli and the respondent no.3 and to take appropriate action against them based on such inquiry. In Criminal Application No.78 of 2012 the wife of the petitioner in the writ petition, who has also been arrayed as an accused in the same crime, is seeking quashment of the F.I.R. and the crime.

3. The learned advocate for the petitioner and the applicant vehemently submitted that their names do not appear in the F.I.R. and it is only to extort money that the respondent no.3 Investigating Officer has falsely implicated them. Even he refused to release the petitioner on bail in spite of this Court granting him interim anticipatory bail. Without there being any reference in the F.I.R. the respondent no.3 Investigating Officer has manipulated the papers to falsely implicate them to wreck vengeance. Even though the petitioner had informed him about this Court having granted interim anticipatory bail, he caused the petitioner to be arrested. He confined him to prison over night and produced him before the Magistrate on the next day at 3.00 p.m. and it is only thereafter that the Magistrate released the

petitioner on bail. The learned advocate for the petitioner had sent a fax to Hingoli regarding grant of interim anticipatory bail. Even the office of the Public Prosecutor at the High Court had intimated the Superintendent of Police by way of mail in the same night and still the petitioner was not released on bail. The learned advocate would further point out that even in the affidavit in reply the respondent nos. 2 and 3 have admitted the fact that the petitioner was not released in spite of interim anticipatory bail. On the contrary they have under a misconception detained him flouting the order of this Court. He adverted our attention to the statements in the affidavits in reply to the effect that since the petitioner was already arrested he could not have been released on ad interim anticipatory bail. The learned advocate also adverted our attention to the fact that the respondent no.3-Investigating Officer himself had made an entry in the station diary on the very night on 23.02.2010 regarding the receipt of information regarding grant of interim anticipatory bail. Still the petitioner was not released which has deprived him of his fundamental right to life and personal liberty and therefore he deserves to be compensated adequately in addition to the direction to inquire into and take appropriate action against the respondent nos. 2 and 3 for such illegal detention.

4. The learned advocate for the applicant in Criminal Application No.78 of 2012 submitted that it is only to take a revenge as the petitioner who

is her husband had lodged a complaint against the respondent nos. 2 and 3 that she has been falsely implicated and therefore by following the principle laid down in the case of **State of Haryana and Ors. V/s. Bhajan Lal and Ors.; AIR 1992 SUPREME COURT 604**, the crime as against her is liable to be quashed and set aside.

5. Per contra, the learned A.P.P. and the learned advocate for the respondent no.3-Investigating Officer referring to their respective affidavits in reply submitted that there are several disputed questions of facts which cannot be gone into under the writ jurisdiction as far as the alleged illegal detention of the petitioner is concerned. It would be appropriate to allow him to take recourse to the ordinary civil law. He further submitted that there is no material to show that a certified copy of the order of the Court granting interim anticipatory bail was produced before the officer in charge of the police station or the respondent nos. 2 and 3. They were not supposed to release the petitioner on bail merely on the basis of some electronic correspondence. Therefore when there was no material to show that such a certified copy of the order was produced it cannot be said that the petitioner's arrest and detention was illegal.

6. The learned A.P.P. and the learned advocate for the respondent no.3 Investigating Officer would further submit that merely because the

petitioner's and the applicant's name was not mentioned in the F.I.R. that would not *per se* be a clinching material. The fact remains that during the course of investigation it was transpired that even they were involved in the crime and even a vehicle registered in the name of the applicant's wife was found to have been used in the crime. Therefore there was a *prima facie* material to reveal their involvement in the crime and it would be appropriate to allow the trial Court to ponder upon it.

7. We have carefully perused the record. It is pertinent to note that in order to have some objective material this Court had directed the Chief Judicial Magistrate, Hingoli to conduct an inquiry into the alleged allegation about the illegal detention. Accordingly, the learned Additional Chief Judicial Magistrate, Hingoli conducted an inquiry and submitted a report dated 19.11.2018. It is suffice to observe that the learned Additional Chief Judicial Magistrate has recorded the statements of the petitioner, his wife the applicant and has even recorded the statements of the respondent nos. 2 and 3. By a detailed reasoning the learned Additional Chief Judicial Magistrate has found that there is a substance in the allegation regarding illegal detention of the petitioner by the respondent no.3-Investigating Officer.

8. It is trite that the petitioner is laying a claim in public law for compensation for the alleged breach of his fundamental right to life and

personal liberty. The law in this respect has been evolved by the Supreme Court over last several years viz. **Bhagalpur Blinding Case [Khatri (II) Vs. State of Bihar; 1981 (1) SCC 627]**, **Bhagalpur Blinding Case [Khatri (IV) Vs. State of Bihar; 1981 (2) SCC 493]**, **Rudul Sah v. State of Bihar; (1983) 4 SCC 141**. **M.C. Mehta Vs. Union of India; (1987) 1 SCC 395**, **Smt. Nilabati Behara Vs. State of Orissa and Ors.; AIR 1993 SC 1960**, **D.K. Basu Vs. State of West Bengal; (1997) 1 SCC 416**, **State of Andhra Pradesh. Vs. Challa Ramkrishna Reddy; 2000 AIR (SC) 2083** and **Sube Singh Vs State of Haryana; AIR 2006 (SC) 1117**. It is quite apparent that this Court does have power under Article 226 of the Constitution of India to award compensation in a suitable cases where citizen's fundamental rights are breached by State machineries. The case of illegal detention by police machinery would certainly be one of such instances to claim compensation.

It is important to note following observation from the case of **Rudul Sah (supra)**:

*“The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was **factually controversial**, in the sense that a civil court may or may not have upheld this claim. But we have no doubt that”*

(Emphasis supplied)

9. Even in the case of **Sanjay Sitaram Khemka Vs. State of Maharashtra and Ors.; AIR 2006 SC 2016**, it has been laid down that

wherever there are several disputed questions of facts, the High Court in exercise of the powers under Article 226 of the Constitution of India cannot deal with the issue by invoking the power under Article 226 of the Constitution of India.

10. In the matter in hand there is not only an objective material available on record in the form of a detail report of the Additional Chief Judicial Magistrate but even there are affidavits in reply of the respondent nos. 2 and 3. From this material one can easily conclude, as a fact, that the petitioner was illegally detained ignoring the order of the interim anticipatory bail. As has been rightly demonstrated by the learned Additional Chief Judicial Magistrate, the respondent no.3 in his own hand writing had made an endorsement in the station diary referring to such interim anticipatory bail granted to the petitioner. Above all, in their affidavits in reply the respondent nos. 2 and 3 have apparently accepted the fact that they were made aware about such interim anticipatory bail granted to the petitioner. Their stand that since the order was received by them after the petitioner was arrested, suggesting that by virtue of such arrest the order had become infructuous, is not only fallacious but illegal and demonstrates that they were labouring under some misconception. It also clearly demonstrates that they had deliberately ignored the order granting interim anticipatory bail to the petitioner. In our considered view, this much of material is sufficient to

establish the fact that the petitioner was illegally detained in custody at least from the time the respondent no.3 had made entry in the station diary in the night of 23.02.2010 till the petitioner was produced before the Magistrate on 24.02.2010 at 3.00 p.m. Such illegal detention can easily be attributed to the deliberate conduct of the respondent no.3 which surprisingly is being endorsed by the respondent no.2 who is the Superintendent of Police. It is under these peculiar facts and circumstances that we have no hesitation to conclude that the petitioner was illegally detained depriving him of his fundamental right to life and personal liberty and he deserves to be compensated therefor under Article 226 of the Constitution of India.

11. So far as the request of the applicant who is the wife of the petitioner seeking quashment of the F.I.R. and the crime, in our considered view, since the charge-sheet has already been filed and the crime is of the year 2009 it would be just and proper to allow the trial Magistrate to conduct the trial extending an opportunity to the prosecution to substantiate the charge. We find no sufficient and cogent reason to jump to the conclusion that she is being falsely implicated to wreck vengeance only because the petitioner happens to be her husband who was making allegations against the police machinery.

12. Taking into consideration the over all conspectus of the matter,

the writ petition deserves to be allowed. The respondents shall pay to the petitioner Rupees Two Lakhs (Rs. 2,00,000/-) within a period of two months failing which the amount shall carry interest at the rate of 12% per annum till realization of the entire amount.

13. It shall be open for the respondent no.1-State to independently inquire into and fix the responsibility for the illegal detention of the petitioner and to recover the amount from the erring official/s.

14. The Criminal Application No. 78 of 2012 is dismissed. The Criminal Application No. 2452 of 2018 is already disposed of by the order dated 24.08.2018.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]