

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 651 OF 2018

Vijay Bhimraj Mali,
Age: Minor, Occ.: Nil,
Through his father/guardian,
Bhimraj S/o. Waman Mali,
Aged: 50 years, Occupation: Labour,
Residing at Village Valan Pimpri,
Tq. Rahuri, Dist. Ahmednagar.

... PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary of Home Department,
Mantralaya, Mumbai-32.
2. The Police Station,
Through Police Inspector,
Hinjawadi City Police Station,
Pune, Dist. Pune.
3. The Police Station,
Through Police Inspector,
Gangapur Police Station,
Tq. Gangapur, Dist. Aurangabad.
4. The Police Station,
Through Police Inspector,
Lonikand Pune (Rural),
Dist. Pune.
5. The Police Station,
Through Police Inspector,
Sonai, Tq. Newasa, Dist. Ahmednagar.

... RESPONDENTS

...
Mrs. Sunita G. Sonawane, Advocate for Petitioner.

Mr. R. D. Sanap, APP for Respondents.
...

CORAM : **T. V. NALAWADE &
K. K. SONAWANE, JJ.**

DATE : 30th September, 2019.

JUDGMENT: (Per T. V. Nalawade, J.)

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The petition is filed for compensation of Rs.10,00,000/- on account of illegal detention of the Petitioner in Police Custody and Magisterial Custody.

3 It is the case of Petitioner that he was born on 3rd January, 2001. The submissions made and record show that on 3rd July, 2016, 4th July, 2016, 13th July, 2016 and 15th July, 2016 crimes were registered in different police stations like Lonikand (Rural) Police Station, Pune, Sonai Police Station, Tahsil Newasa, District Ahmednagar, Hinjewadi City Police Station, Pune and Gangapur

Police Station, Aurangabad respectively for the offences punishable under Section 394 etc. of the Indian Penal Code. The Petitioner was shown as one of the Accused in all the four crimes but only after making investigation of the crimes. In the reports, the informants had informed that they did not know the persons, who had robbed them. By chance the offenders were subsequently detected.

4 The Petitioner came to be arrested on 26th November, 2016 in the crime registered with Hinjewadi Police Station. It is his contention that on the date of registration of crime, on the date of arrest and on the date of alleged offence, he was aged about 15 years as per his birth date, but his age was shown as 20 years by the police. It is contended that by giving false information, PCR and MCR was obtained against him and he was kept in Yerwada Jail, Central Jail, Pune, for months together in MCR. It is his contention that he was illegally detained by police in police custody and magisterial custody in lockup and jail for the period of 8 months and 25 days and so, he is entitled to get compensation.

5 All the four police stations have filed reply affidavits. It is

their common contention that the Petitioner never informed to police while in custody that he was minor. It is their contention that even before the Judicial Magistrate First Class such contention was not made and his age was recorded as 20 years on the basis of information given by him. It is also the contention of these police stations that in all the four crimes, the elder brother of Petitioner was co-accused alongwith other accused and he also did not inform the police or Magistrate that the Petitioner was minor. In all the replies, particulars of arrest made by Hinjewadi Police, Pune of Petitioner and others are given and the contentions show that he came to be arrested in C.R. No.324 of 2016, registered with Hinjewadi Police Station, Pune, on 26th November, 2016.

6 The contentions are made that during investigation one knife came to be recovered from the residential place and when police had visited the residential place of Petitioner, the parents of Petitioner were present there, but they also did not inform that the Petitioner was minor. After the arrest, initially, the Petitioner was sent to MCR and during that period identification parades were held and on 2nd December, 2016, police custody remand was obtained and he was

kept in PCR till 6th December, 2016 by Hinjewadi Police. It is the contention of Hinjewadi Police that in aforesaid crime, criminal case bearing R.C.C. No.1154 of 2017, is filed against the Petitioner and others.

7 The submissions made and record show that other police stations obtained transfer warrants in respect of Petitioner for taking him in custody in other aforesaid crimes. The submissions made and record show that the Petitioner filed first application before the Judicial Magistrate First Class, Newasa on 15th April, 2017 and he contended that he was minor and his date of birth is 3rd January, 2001. Alongwith the application, he filed school record to show the date of birth. In that crime, Newasa Court made order on 12th May, 2017 and directed to produce the Petitioner before the Juvenile Justice Board, Ahmednagar. He was not produced before the Juvenile Justice Board as per this order. Due to that, he filed application before the other Courts like Judicial Magistrate First Class, Gangapur, Judicial Magistrate First Class, Pune etc. The Pune Court made order similar to the order made by the Judicial Magistrate First Class, Newasa on 19th August, 2017. Only after that day, he was taken out of Yerwada

Jail and the order was complied with.

8 To ascertain as to whether necessary procedure was followed before the different Judicial Magistrates First Class, this Court had directed to collect reports from the concerned Judicial Magistrates First Class. The report submitted by CJM, Aurangabad is comprehensive and it shows that on the first date when the Petitioner was produced before the Judicial Magistrate First Class after his arrest, as per the record, there was no legal aid provided to him but after few days one Advocate had filed *Vakalatnama*. The fact remains that he was not granted bail in all the crimes. The other Courts realized that the order was passed already by Pune Court though they had directed the police to see that the Petitioner is produced for medical examination. When police went to Yerwada Jail, they learnt that on 19th August, 2017, order made by the Judicial Magistrate First Class, Pune to produce the Petitioner before the Juvenile Justice Board was executed and he was taken out of the jail. The report of CJM also shows that Pune Court had informed the police that finding was given that the Petitioner was declared as child in conflict with law. Then the other Judicial Magistrates First Class disposed of the

applications filed by the Petitioner for declaring that he was child in conflict with law at the relevant time. The record, however, shows that the Judicial Magistrate First Class, Gangapur had not decided the application, which was filed on 24th April, 2017 till 12th September, 2017, for the period of 4 months and 16 days.

9 The record as a whole shows that on 12th May, 2017 itself, there was order of Judicial Magistrate First Class, Newasa, District Ahmednagar that the Petitioner should be produced before the Juvenile Justice Board, Ahmednagar, but from that day till 19th August, 2017, the Petitioner was kept in Yerwada Jail. Thus, even after the order of Judicial Magistrate First Class, he was kept in jail from 12th May, 2017 to 19th August, 2017, as an adult offender.

10 The aforesaid facts need to be kept in mind while considering the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as “the Act”). This Act came in force on 15th January, 2016 and so, these provisions are applicable to the present matter. The “objects and reasons” clause of the Act shows that this Act was made to make

comprehensive legislation in respect of child in conflict with law and these provisions are made as per the adoption of resolutions made in International Conventions. Those resolutions are adopted by the India and the provisions are also in consonance with Article 15(3), Article 39 (e) and (f) and Articles 45 and 47 of the Constitution of India. The scheme of the Act shows that separate and different treatment needs to be given to the child in conflict with law. A person below the age of 18 years is to be treated as child in conflict with law when he is shown to be involved in commission of crime. The provision of Section 10 of the Act provides that such child cannot be kept in police lockup or jail. The principle of institutionalization can be used only as a last resort in such matters. The Act shows that the measures without resorting to judicial proceedings are to be promoted (Section 3 of the Act).

11 The provisions of Sections 4 and 6 of the Act show that even during the inquiry, the child in conflict with law, needs to be kept in place of safety. Section 8 of the Act shows that the proceedings under the Act can be dealt with only by the Juvenile Justice Board. Section 8(3)(c) of the Act shows that the Board or the Court

mentioned in the Act is required to ensure that legal aid is given to such child throughout.

12 The provision of Section 9 of the Act shows that the Judicial Magistrate First Class can form opinion that the person produced before him is a child in conflict with law and after giving such finding, the Judicial Magistrate First Class is bound to forward such child without any delay to the Juvenile Justice Board. The provision of Section 9 has two parts. The first part shows the duties imposed on Judicial Magistrate First Class to take cognizance of the fact that the person produced is a child in conflict with law and on his own pass necessary orders. The second part shows that when such a claim is made by such person, in that case also, Judicial Magistrate First Class is expected to hold inquiry, record finding and send such child in conflict with law immediately to the Juvenile Justice Board.

13 The provision of Section 12 of the Act shows that in such case, the child needs to be released on bail. If the child is not released on bail, then he needs to be kept in observation home or place of safety. The provision of Section 23 of the Act shows that the

child in conflict with law cannot be tried with adult accused.

14 In view of the object behind the provisions of the Act and the provisions of Articles of the Constitution of India mentioned above, the Court needs to go with the presumption that it is fundamental right of the child, which is protected by the Act. Thus, the provisions of the Act need to be treated as mandatory in nature. Due to such nature of the provisions, it become strict liability of the State if there is contravention of provisions of the Act and then arises the liability of the State to pay the compensation. Even delay caused in taking the decision in such matters by the Judicial Magistrate First Class under the provisions already quoted, can become a ground for claiming compensation. This is because the provisions of the Act not only aim at protection of fundamental right of the child in conflict with law, but they also aim at protection of future of the child. The detention of such child in lockup or jail necessarily causes harm to his future. Thus, the compensation can be granted on various grounds to such child, when he is illegally detained, he is detained in breach of the provisions of the Act.

15 In the case reported as **AIR 1993 Supreme Court 1960**,
(*Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*), it is laid down by the Apex Court that if there is violation of human rights mentioned in International Covenant on Civil and Political Rights, 1966 (particularly Article 9(5)), then the Court needs to consider such contravention and needs to grant compensation. It is also laid down that Article 21 of the Constitution of India also enables the Court to consider the violation of such right and in writ petition the Court can grant compensation.

16 In the case reported as **2006 ALL MR (Cri) 1018**,
(*Parbatabai Sakharam Taram Vs. State of Maharashtra & Ors.*) of Nagpur Bench of this Court, a girl aged about 13 years was involved and she was illegally detained. In that case, this Court granted compensation of Rs.5,00,000/-.

17 In the present matter, in view of the facts of the matter and as the Courts also did not take proper care in the present matter and as the elder brother of the Petitioner was co-accused and he must have been produced before the Magistrate on every occasion

alongwith Petitioner, this Court holds that the compensation cannot be on higher side. Only because it is strict liability, this Court holds that some compensation needs to be given and the amount of Rs.50,000/- would be just and proper in the present matter. Similarly, some directions need to be given to the Respondents-Authorities to see that the record prepared after granting of PCR, in police station and the record prepared in jail is erased and that record is never used against the Petitioner in future. In the result, the following order is passed:

ORDER

- I. The petition is allowed.
- II. The Respondents are hereby directed to pay compensation of Rs.50,000/- (Rupees Fifty Thousand only) to the Petitioner.
- III. The amount is to be deposited within 45 days from today.
- IV. If the amount is not deposited within 45 days, the amount shall carry interest at the rate of 8% per annum after completion of 45 days.

V. The Respondents are to erase the record of police custody remand in police lockup and the record of detention of Petitioner in jail as under trial prisoner and that is not made available to anybody for any kind of use in future.

VI. Rule is made absolute in those terms.

[K. K. SONAWANE, J.]

[T. V. NALAWADE, J.]

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