

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1329 OF 2018

Arvind @ Arun Marutirao Ugale,
Age : 50 years, Occu. Agriculture,
R/o Ghogargaon, Taluka Shrigonda,
District Ahmednagar

PETITIONER

VERSUS

1. State of Maharashtra,
through its Secretary,
Home Department,
Mantralaya, Mumbai
2. Commissioner of Police,
Ahmednagar, Taluka and
District Ahmednagar
3. Superintendent of Police,
Ahmednagar, District Ahmednagar
4. Inspector of Police,
Shrigonda Police Station,
Taluka Shrigonda, Dist. Ahmednagar

RESPONDENTS

Mrs. Rashmi S. Kulkarni, Advocate for the Petitioner
Mr. D.R. Kale, Assistant Public Prosecutor (A.P.P.)
for the respondents/State

**CORAM : S.S. SHINDE AND
R.G. AVACHAT, JJ.**

JUDGMENT RESERVED ON : 22nd JANUARY, 2019
JUDGMENT PRONOUNCED ON : 1st FEBRUARY, 2019

JUDGMENT (PER : R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith. With

the consent of learned counsel for the petitioner and the learned A.P.P., heard finally.

2. This is a petition under Article 226 of the Constitution of India. The petitioner herein has prayed for the following reliefs :-

- (a) Transfer the investigation of F.I.R. being C.R.No.384 of 2018, registered with Police Station, Shrigonda for the offences punishable under Sections 307, 504 and 506 of the Indian Penal Code, to any other Police Station.
- (b) Direct respondent Nos.1 to 4 to pay the petitioners Rs.50 lakhs as compensation for his illegal detention from 3.00 p.m. of 5th August, 2018 to 12.10 a.m. of 6th August, 2018 at Police Station, Shrigonda.
- (c) Direct respondent Nos.1 to 3 to initiate departmental enquiry against the officers, who are involved in the illegal detention of the petitioner, working with respondent No. 4.

3. Mrs. Rashmi S. Kulkarni, learned counsel appearing for the petitioner, made submissions on the

lines of the averments made in the writ petition and the rejoinder. According to her, transfer of investigation can be directed by the Constitutional Court to ensure fair investigation and fair trial. In support of her submission, she relied on the judgment of the Hon'ble the Supreme Court of India in the case of ***Dharam Pal Vs. State of Haryana and others AIR 2016 S.C.618.***

. Turning to the factual matrix of the case, learned counsel for the petitioner would submit that on intervention of bigwigs, respondent No.4 tried to hush up the matter, initiated by the petitioner by lodging First Information Report ("FIR", for short), being C.R.No.384/2018. According to learned counsel, the petitioner had to make number of communications with the higher-ups so as to ensure the Investigating Officer to take appropriate steps in investigation of the crime registered at the behest of the petitioner. Learned counsel took us through such correspondence made by the petitioner with the Superintendent of Police, Ahmednagar. According to learned counsel, the petitioner was illegally detained at the Police Station for little over nine hours. Statutory mandatory provisions as regards arrest of an accused have been thrown to the

wind. The Investigating Officer and other officials of respondent No.4 played mischief. They asked the petitioner to cuff-up some amount for letting him go home. The petitioner did not relent. The petitioner was, therefore, illegally detained and his adversary has been favoured. The petitioner has, therefore, filed this petition for the reliefs mentioned hereinabove.

4. Mr. D.R. Kale, learned A.P.P. would, on the other hand, submit that the petitioner cried wolf. The falsity of the case of the petitioner is exposed when the Investigating Officer filed his affidavit-in-reply and produced on record the relevant papers. According to learned A.P.P., the petition is without substance. The same be, therefore, dismissed.

5. There can be no two views over the legal proposition that the High Court, being a Constitutional Court, has every power to direct transfer of investigation from one agency to the other so as to ensure fair investigation and fair trial. The facts of the case on hand, however, appear to be other way round. We are, therefore, not inclined to grant any of the reliefs the petitioner has prayed for.

6. The petitioner sold his agricultural land to one Sachin Gaikwad for a consideration of Rs.40,00,000/-. The petitioner claims to have received only Rs.13,00,000/-. On 4th August, 2018, the petitioner spotted Shivdas, the brother of Sachin Gaikwad. Shivdas was in a car. The petitioner claims to have approached Shivdas to request him to ask his brother – Sachin Gaikwad to pay his entire consideration amount. Shivdas refused. According to the petitioner, Shivdas abused him and drove the car with a view to run over the petitioner. The petitioner jumped so as to save himself. He fell on the road and suffered injuries. This was said to be the incident that took place at 5.30 p.m. on 4th August, 2018.

. Shivdas has other story to tell, as is gathered from the police papers submitted for our perusal. Based on the FIR lodged by Shivdas, Crime being C.R. No.383/2018 for the offences punishable under Sections 392, 341 r/w 34 of the Indian Penal Code, came to be registered against the petitioner with Police Station, Shrigonda. It was registered on 4th August, 2018 itself. The petitioner was alleged to have intercepted Shivdas, abused and manhandled him. It was further alleged that

the petitioner robbed Shivdas of Rs.17,000/- to Rs.18,000/-.

7. Admittedly, the petitioner approached Police Station, Shrigonda on the following day to lodge FIR against Shivdas and two of his unknown associates. We do not propose to make observation regarding merits of the matter. Suffice it to say that had it been a bid on the life of the petitioner, he would not have spent a minute here and there to approach the nearest Police Station. Be that as it may. The facts indicate that the petitioner and Shivdas Gaikwad lodged cross FIRs against each other. The tale-tell stories in both reports are quite different. It, therefore, cannot be said to be a case of registration of two FIRs pertaining to one and the same incident.

8. We have perused the affidavit-in-reply filed by the Investigating Officer. Sachin Gaikwad was arrested on 25th August, 2018. The vehicle bearing registration No. MH-16-BR-9666 had also been seized from the custody of Sachin. On production of Shivdas before the learned Judicial Magistrate, First Class, he was remanded to judicial custody. The affidavit further records the statements of eight persons, acquainted with the facts

and circumstances of the case, have been recorded. CCTV footage has already been recovered by drawing the panchanama in that regard. It, therefore, appears to us that the investigation of C.R. No.384/2018 is in progress in the right direction and there is nothing for us to observe, the investigation being unfair.

9. The petitioner claims to have had been illegally detained at the Police Station from 3.00 p.m. of 5th August, 2018 to 12.10 a.m. of 6th August, 2018. It has been averred in the petition that the officials of respondent No.4 did not allow the petitioner to move even to answer call of nature during the said period. The falsity of the petitioner's claim has been exposed. The affidavit filed on behalf of respondent No.4 records that the petitioner was referred to hospital for his medical examination. The injury certificate of the petitioner has been produced on record. The same indicates that the petitioner was examined at Rural Hospital at Shrigonda at 7.20 p.m. on 5th August, 2018. The affidavit records that the petitioner left the Police Station by 7.00 p.m. for his medical examination and returned with the medical certificate at 11.00 p.m. We cannot go into the disputed questions of fact as to

time and hours the petitioner spent for his medical examination. The fact remains that the petitioner has come with a false claim to have been detained at the Police Station for nine hours and he was even not allowed to move to answer call of nature during the said period. True, in affidavit-in-rejoinder, the petitioner came with some explanation.

10. According to learned counsel for the petitioner, the petitioner was arrested by 12.10 a.m. of 6th August, 2018. While effecting the arrest of the petitioner, the provisions of Section 41(1) (b) of the Code of Criminal Procedure, 1973 have not been followed. We have, therefore, perused the said provisions and propose to reproduce them below:-

"41. When police may arrest without warrant.-

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person -

(a) *****

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:-

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary-

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured;

and the police officer shall record while making such arrest, his reasons in writing:

[Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this subsection, record the reasons in writing for not making the arrest;]

11. We are not at one with the submissions made by the learned counsel for the petitioner. For, the said provisions speak of arrest of a person accused of an offence which is cognizable and punishable with

imprisonment for a term which may be less than seven years or which may extend to seven years. In this case, the offence punishable under Section 392 of the Indian Penal Code has been registered against the petitioner. The said offence is punishable with rigorous imprisonment for ten years and fine. There is also record to indicate that the petitioner's son was informed regarding the petitioner's arrest. As such, we do not find any breach of statutory mandatory provisions relating to arrest of the petitioner. It is reiterated that from the affidavit-in-reply and the papers of investigation of both C.R. No.383/2018 and 384/2018, we are of the view that the petition is devoid of any merit.

12. In the result, the writ petition fails. The same is, therefore, dismissed. Rule stands discharged accordingly.

[R.G. AVACHAT]
JUDGE

[S.S. SHINDE]
JUDGE