

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 547 OF 2013

1. Balgir S/o Gangagir Giri,
Age Major, Occu. Agriculture,
R/o Sawargaon, A/p. Pishore,
Tq. Kannad, District Aurangabad
2. Satish S/o Balgir Giri,
Age Major, Occu. Agriculture,
R/o Sawargaon, A/o Pishore,
Tq. Kannad, Dist. Aurangabad. .. **PETITIONERS**

VERSUS

1. The State of Maharashtra,
(Through the Secretary),
Department of Home affairs,
Mantralaya, Mumbai.
2. The Direct General of Police,
Maharashtra State, Mumbai.
3. The Superintendent of Police,
N-12, CIDCO, Aurangabad.
4. V.P. Nandedkar,
Police Inspector,
Local Crime Branch (Rural)
And Special Executive Magistrate
S.P. Office, N 12, CIDCO,
Aurangabad.
5. Shri. Tayde,
Police Inspector,
Pishore Police Station,
Tq. Kannad, Dist. Aurangabad.
6. S.H. Khandekar,
Police Sub-Inspector,
Pishore Police Station,
Tq. Kannad, Dist. Aurangabad.
7. The Special Executive Magistrate,
S.P. Office, N12, CIDCO,
Aurangabad.
8. The Police Inspector,
Pishore Police Station,
Tq. Kannad, Dist. Aurangabad.

9. The Prison Superintendent,
Harsul Central Prison,
Aurangabad.

.. RESPONDENTS.

...

WITH

CRIMINAL WRIT PETITION NO. 155 OF 2014

Amjadkhan S/o. Azizkhan Pathan,
Age 30 years, Occu. Agriculture,
R/o. Demani Wahegaon, A/p. Karmad,
Tq. Dist. Aurangabad.

.. Petitioner

VERSUS

1. The State of Maharashtra
Through The Secretary,
Department of Home,
Mantralaya Mumbai.
2. The Director General of Police,
Maharashtra State Police Headquarters,
Old Council Hall, Shaeed Bhagat Singh Marg,
Mumbai – 1.
3. The Superintendent of Police,
N-12 HUDCO, Aurangabad.
4. K. K. Patil,
Police Inspector,
Local Crime Branch (Rural),
And Special Executive Magistrate,
S.P. Office, Aurangabad.
5. Sambhaji B. Pawar,
Assistant Police Inspector,
Karmad Police Station,
Tq. Dist. Aurangabad.
6. Shri. D. D. Rawte,
Sub-Inspector,
Karmad Police Station,
Tq. Dist. Aurangabad.
7. Shri. R. R. Borade,
Beat Jamadar
Karmad Police Station,
Tq. Dist. Aurangabad.
- 7-A. Walmik Kamble,
Beat Jamadar,
Karmad Police Station,
Tq. Dist. Aurangabad.

8. The Special Executive Magistrate,
S.P.Office, Aurangabad,
N-12, HUDCO, Aurangabad.
9. Karmad Police Station,
Tq. Dist. Aurangabad.
Through The Assistant Police Inspector.
10. The Prison Superintendent,
Aurangabad Central Prison,
Harsul, Aurangabad,
Tq. Dist. Aurangabad. .. Respondents.

...
Mr. C. V. Dharurkar, Advocate for Petitioners.
Mr. B. V. Virdhe, APP for Respondents.
...

**CORAM : T. V. NALAWADE AND
M. G. SEWLIKAR, JJ.**

DATE : 15th OCTOBER, 2020

ORDER :-

In the first proceeding a relief is claimed to quash and set aside the interim order made by Special Executive Magistrate, Aurangabad Rural, by which the petitioner was directed to execute the interim bond of good behaviour of the amount of Rs. 50,000/- (Rupees Fifty Thousand) with one surety. The surety is expected to be of Doctor or Engineer. This order was made in Chapter proceeding started under Section 110 (e) and (g) of the Code of Criminal Procedure ("Cr.P.C.") on the basis of report given by Police of Pishor Police Station, on 20-03-2013. A prayer was made to stay the chapter proceeding also. By order dated 14-10-2013, this Court had directed respondents not to insist attendance of the petitioners in the said chapter proceeding and that order was continued by subsequent orders like order dated 22-11-2013, etc.

2. In the second proceeding also a relief is claimed to quash and set aside the proceedings initiated under Section 110 (e) and (g) of

the Cr.P.C. That proceeding was started on the basis of Karmad Police Station's report dated 23-07-2013. Against this petitioner also order was made for directing him to execute interim bond of good behaviour.

3. In both the proceedings, present petitioners were first arrested by Police under Section 151 of the Cr.P.C. and they were produced along with report of the Police before the Executive Magistrate. On the first day of production, in both the matters show cause notices under Section 111 of the Cr.P.C. were given to them and order was made for execution of interim bond. Both the petitioners could not give surety on the first day and so they were behind bars for five and two days. After that, the surety was given and bond was executed and they were released.

4. In the first proceeding, compensation of Rupees Five Lakh is claimed by contending that he was illegally detained from 20-03-2013 to 25-03-2013. In second proceeding, compensation of Rupees Three Lakh is claimed by contending that he was kept in jail illegally from 23-07-2013 to 25-07-2013.

5. Both the sides are heard.

6. Learned counsel for petitioners placed reliance on some of the reported cases and he made following submissions-

(i) It was not legal on the part of the Special Executive Magistrate to ask the petitioners to execute interim bond on the first day itself. He ought to have given them time to have their say in respect of show cause notice.

(ii) The Executive Magistrate ought to have started hearing of the chapter proceedings on the first day itself and it was not proper

on the part of Executive Magistrate to adjourn the proceedings and thus order passed by Executive Magistrate, is illegal.

(iii) Asking of interim bond without enquiry was illegal and so the detention of petitioners till they furnish bond and sureties was illegal and so petitioners are entitled to compensation.

7. The submissions made and record show that in both the matters no interest was shown to prosecute the matters and interest was shown to obtain interim orders of aforesaid nature. In view of provisions of Section 116(6) of Cr.P.C., the chapter proceeding is required to be completed within six months after starting of the same and it can be said that by remaining absent after orders of this Court, the petitioners ensured that chapter proceedings do not continue further.

8. For deciding grievance of aforesaid nature, it is necessary to consider the scheme given in Chapter VIII of the Cr.P.C. where the provisions are given for taking security for keeping the peace and for good behaviour. These provisions give circumstance or grounds for which chapter proceeding can be started and also the procedure, which is required to be followed for conducting chapter case. In Section 110 of Cr.P.C. some circumstances are mentioned, in which chapter case can be started under this Section. Relevant portion of section 110 of the Cr.P.C. provides as under -

"110 Security for good behaviour from habitual offenders:-

When an Executive Magistrate receives information that there is within his local jurisdiction a person who -

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit."

9. The aforesaid provision viz. Section 110 (g) shows that if Magistrate forms opinion that the person is so desperate and dangerous as to render his being at large without security hazardous to the community, he can start proceeding against him under this Section. The consideration of material needs to be from objective angle. Once he forms opinion that such proceeding needs to be started, he has to follow the procedure, which is given in Section 111 of the Cr.P.C., that provision reads as under :-

***"111. Order to be made-* When a Magistrate acting under Section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall made an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required."**

10. In Section 116(3) of Cr.P.C. there is provision which provides for asking the person against whom chapter proceeding is started under Section 110 of Cr.P.C. to execute interim bond. The provisions of Section 116 (3) of Cr.P.C. reads as under :-

"116. Inquiry as to truth of information-
(1)

(2)

(3) *After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquility or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded :*

Provided that-

(a) *no person against whom proceedings are not being taken under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behaviour;*

(b) *the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111."*

11. In the present matter, this Court will be considering only provisions of Section 110(g) of Cr.P.C. as only in one case there was one conviction and in another case there was no conviction.

12. The procedure for starting and conducting chapter case is given in Section 116 of the Cr.P.C. itself and for that provisions of Section 116(1)(2) need to be kept in mind, the provisions are as under :-

"116. Inquiry as to truth of information-

(1) When an order under section 111 has been read or explained under section 112 to a person in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons-cases."

13. The aforesaid parts of Section 116 (1) and (2) of Cr.P.C. show that chapter proceeding starts after making and informing of the order under Section 111 of Cr.P.C. Section 112 of Cr.P.C. shows that order made under Section 111 of Cr.P.C. needs to be read over or explained to the person against whom chapter proceeding is started when he was brought before Magistrate and when he appears before the Magistrate in response to the summons, which may be issued against him. Even warrant can also be issued against him if such necessity is felt by the Magistrate. If said person admits allegations mentioned in show cause notice and he shows readiness to execute bond as prescribed in Chapter VIII of Cr.P.C. then Magistrate may not feel it necessary to proceed ahead with enquiry and may pass orders on the basis of such admission, plea. If person denies allegations mentioned in the show cause notice then Magistrate is required to proceed ahead with enquiry as per procedure given for recording evidence in summons cases.

14. If provisions of Section 116(1) and (3) of Cr.P.C. are read together inference is available that if necessary material is available and Magistrate does not feel it necessary, Magistrate may not go for taking evidence before asking aforesaid person to execute interim bond. If person wants to contest the proceeding then the further procedure is required to be followed but before that the Magistrate is expected to assess the material available and if that material is not sufficient, the Magistrate may ask for leading evidence to the Police Station, who has given proposal for starting chapter proceeding.

15. The provision of Section 116 (4) of Cr.P.C. reads as under:-

"116. Inquiry as to truth of information-

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general reputation or otherwise."

16. The provision of Section 116(4) of Cr.P.C. again shows that the ground on which Chapter proceeding is started needs to be substantiated by evidence of general reputation or otherwise. The wording of this provision can be read even for making out *prima facie* case for obtaining interim bond under Section 116(3) of Cr.P.C..

17. The provisions of Chapter VIII of Cr.P.C. are special provisions and they constitute a scheme in itself. Other general provisions of the Code like Section 88 of Cr.P.C., which provides for taking bond for appearance from the accused or other persons and releasing the person on that bond are not applicable to the chapter proceeding. In view

of this position, when a person is produced before the Magistrate, may be after his arrest under Section 151 of Cr.P.C. by the Police or after his arrest on the basis of warrant issued by Magistrate under Section 113 of Cr.P.C., he cannot be released on bond which can be obtained under Section 88 of Cr.P.C. Thus, it needs to be kept in mind that procedure, which is given in Chapter VIII of Cr.P.C. needs to be followed.

18. Provisions of Section 116 (6) of Cr.P.C. runs as under :

"116. Inquiry as to truth of information -

(6) The inquiry under this Section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs;

Provided that where any person has been kept in detention pending such inquiry, the proceeding against the person, unless terminated earlier shall stand terminated on the expiry of a period of six months of such detention."

19. The aforesaid portion of Section 116 of Cr.P.C. shows that when default is committed by a person, he does not execute a bond, he may be detained for the maximum period of six months. Further, if during enquiry it is not proved that it is necessary to obtain bond in the chapter proceeding, person can be discharged under Section 118 of Cr.P.C. and he must be released from the custody if he is detained. In the famous case of ***Madhu Limayay and another***, which is cited subsequently, it is laid down that provisions of chapter VIII (Old Cr.P.C.) are not in excess of limits laid down by the Constitution. This ratio needs

to be kept in mind while ascertaining in such cases as to whether detention in such a case can be called as illegal, particularly when the facts are of the nature of present proceeding.

20. In the case *Gopalanachari Versus State of Kerala*, reported in **AIR 1981 Supreme Court 674**, which is cited by the learned counsel for the petitioners, the Apex Court has laid down that to the person against whom the Chapter proceeding is started, there is right to defend the proceeding by counsel. If such person is not able to give counsel of his own, then it is duty of Magistrate to see that at State expenses counsel is given to him. This right also cannot be ignored and in view of this right when person is brought before Magistrate after his arrest, it is not advisable for magistrate to record plea in absence of his counsel as the plea is required to be recorded in chapter case as provided in summons case.

21. The aforesaid discussion and circumstances show that in most of the cases, the Magistrate is required to adjourn the enquiry. This Court is discussing only propriety of asking the person to execute interim bond and then adjourn the enquiry. Thus, there may be many circumstances, in which the Magistrate is satisfied that it is necessary to obtain interim bond and he may obtain interim bond for giving opportunity to defend to the person and he may adjourn the enquiry. The aforesaid provision shows that after making order under Section 111 of Cr.P.C. Magistrate has power to make an order under Section 116(3) of Cr.P.C. particularly when the chapter proceeding is started under Sections 108, 109 and 110 of Cr.P.C. If after making order of interim bond, person is not able to give surety, the Magistrate has no other option than to send

the person to the custody. This custody can be continued as already observed, till bond is executed or till enquiry is completed or till he is discharged.

22. To consider the factual aspect, this Court has carefully perused the record of both the proceedings. In writ petition No. 547 of 2013, a show cause notice under Section 111 of Cr.P.C. was issued on 20-03-2013 on the report submitted by the Police and on the basis of material supplied by the Police with report. In the report, the Police has mentioned that starting of chapter proceeding against the person, had become necessary due to communal tension created by that person. The petitioner of this proceeding is Hindu and he had created obstruction on public road which was in the use of Muslim community and by this road they were going to *Masjid*. One Muslim person had given complaint about the obstruction created by the petitioner. There was allegation against the petitioner that he was giving abuses to the *Muslim* persons, who are proceeding by that road. He was also giving threats as they are using this road. The house of the petitioner is situated adjacent to this road. One specific incident dated 18-03-2018 is mentioned and in that incident the petitioner and some other Hindus had attacked house of the complainant and they had assaulted him. They had given threats of life to the complainant. A complaint was given by said *Muslim* person. On the basis of said report, a crime bearing No. 23 of 2013 was registered for the offence punishable under Sections 452, 341, 323, 149 etc of the IPC, and Section 135 of the Bombay Police Act. The report and record show that in the year 2003, Crime No. 39 of 2003 was registered against the petitioner for the offence punishable under Sections 326, 323 and 149 of

the IPC. In the report, there is mention that due to conduct of the petitioner, tension was already created in the aforesaid two communities and possibility of riot was there. Apprehension was expressed that there was possibility of communal riots in the locality due to conduct of the petitioner. Due to this situation created by petitioner, the Police had requested the Magistrate to initiate chapter proceeding and to take the interim bond. The police wanted to see that offence, which the petitioner was likely to commit, is prevented. There is record like statements of many persons showing that in the past also this man had created tension due to his conduct between two communities. In view of this circumstance, the Magistrate asked the petitioner to execute interim bond of Rs. 50,000/- and intention behind it was to prevent him from continuing such activities. This material is mentioned in the show cause notice and also in the order in which interim bond is ordered by the Magistrate. As petitioner failed to give interim bond, with remand warrant he was sent to jail and enquiry was adjourned. It is not the case of petitioner that on that date, he had appointed any counsel and he was ready to go on with enquiry. There is nothing on record to show that he had tendered surety on that day, but it was not accepted. There is say of police with regard to aforesaid circumstances and it is supported by affidavit.

23. In writ petition No. 155 of 2014, the record shows that petitioner was produced before the Magistrate after his arrest under section 151 of Cr.P.C. Police had requested to start chapter proceeding against him under Section 110(e) and (g) of Cr.P.C. Police had reported that one Baban Shinde had made complaint that on 12-07-2013 when he

was working in his field, he noticed that petitioner had destroyed his cotton crop by uprooting plants. It is contended that when he questioned the petitioner as to why he was doing such act, petitioner picked up quarrel. It is contended that the petitioner had already caused loss of around Rs.4,000/- to the complainant. The complainant gave report. Due to this conduct of petitioner, NC was registered for the offences punishable under Sections 427, 504, 506 of the Indian Penal Code. In the past also, a crime bearing No. 75 of 2011 was registered against the petitioner for the offences punishable under Sections 307, 323, 149 etc. of IPC and crime No. 53 of 2010 was registered for the offences punishable under Sections 354 and 324 read with section 34 of IPC. In the report, it is contended by the Police that petitioner was involved in many criminal cases and he was *Gunda* by nature. There was possibility that he may commit cognizable offence in near future and so, it became necessary to start chapter proceeding against him.

24. On the basis of information given by the Police in aforesaid report and the record produced, the Executive Magistrate issued notice under Section 111 of Cr.P.C. After that, order was made under Section 116(3) of Cr.P.C. to direct the petitioner to execute interim bond. This petitioner also did not furnished surety and so he was sent to jail under remand warrant. A direction was given that he was to be produced before Magistrate on 29-07-2013 and enquiry was adjourned.

25. It is not specifically mentioned in the Police report or in show cause notice or other orders that there was conviction to petitioner in writ petition No. 155 of 2014, but there is record that on 13-03-2013 he was convicted in a case for the offence punishable under Sections 354 and 324

read with Section 34 of IPC. He was sentenced to suffer rigorous imprisonment for one year for the offence punishable under Section 354 of IPC. It can be said that he must have got bail after conviction. After the bail, chapter proceeding was started against him in the month of July, 2013. Thus, there was record to show that one conviction and three more cases were there against this petitioner. The Police papers show that externment proceeding was also proposed against him due to his conduct on 04-05-2013. The record shows that there are statements of witnesses in respect of aforesaid incident and also his overall conduct. It appears that enquiry was also conducted to ascertain as to whether there was illegality in chapter proceeding and it was found that there was no illegality or irregularity. To that effect there is some record of District Superintendent of Police. Thus, in this matter also there was material to make out *prima facie* case for starting chapter case under Section 110 (e) and (g) of Cr.P.C. In view of discussion of provisions of Cr.P.C. already made in this matter, it cannot be said that Executive Magistrate committed any error in issuing show cause notice for asking the petitioner to execute interim bond.

26. Learned counsel for the petitioners from both the proceedings placed reliance on following cases.

I) Madhu Limaye and another Versus Sub-Divisional Magistrate, Monghyar and others, reported in AIR 1971 Supreme Court, 2486(1).

II) Gopalanachari Versus State of Kerala, reported in AIR 1981 Supreme Court, 674.

III) Surendra Ramchandra Taori Versus State of Maharashtra and others, reported in 2001(11)LJSoft 75.

IV) Dinesh Vitthal Patil and another Versus State of Maharashtra and others, reported in 2011(9) LJ Soft 36.

V) Rajesh s/o. Suryabhan Nayak Versus State of Maharashtra through Ministry of Homes and others, reported in 2006(8) LJ Soft 39.

VI) Dattatraya s/o. Mahadu Tikkal Versus The State of Maharashtra and others, reported in Criminal Writ Petition No. 964 of 2012 decided on 22nd October, 2013.

VII) Mohd. Salem Mohd. Sakir Ansari Versus L. S. Danekar and another, reported in 2000(1) LJ Soft 16.

VIII) Jaywant Gabaji Tambe Versus State of Maharashtra and others, reported in 2009(1) LJ Soft 48.

27. Learned counsel for petitioners mainly relied on the observations made in *Madhu Limaye's* case cited supra. This Court has carefully gone through the facts of that case and law laid down by the Apex Court. The discussion is mainly in respect of chapter proceeding started under Section 107 of Cr.P.C. (old). The discussion is about procedure which was given in Section 117 of Cr.P.C. (old) and that discussion is in relation to the chapter proceeding, which was started under Section 107 of Cr.P.C. In old Cr.P.C. in Section 107 there were four parts. In parts No. 3 and 4, it was provided for keeping such person in detention. Other portion of Section 107 of Old Code is similar to Section 107 of the new Code. As per provisions of new Code when Chapter Case is started against the person under Section 107 of Cr.P.C., the Magistrate is not competent to ask such person to execute interim bond. That is made clear in Section 116 of Cr.P.C. itself, which is already

quoted. Other provisions show that in the past no specific period was provided for completion of enquiry of chapter proceeding. There are now provision to limit period of six months and release the person, who was detained after six months period, if the enquiry is not completed and he is detained. In any case, this Court has observed that the enquiry needs to be adjourned due to unavoidable circumstances already quoted. In such cases, Executive Magistrate cannot be blamed for it and person who can be blamed for it, is the person who fails to show cause or who fails to give surety.

28. The aforesaid discussion of law and the facts show that there was no violation of fundamental rights of the two petitioners. The detention of the petitioners was as per provisions of statute. Only because petitioners did not give surety and they did not show readiness to contest the matter and there was no pleading of the guilt, the enquiry was adjourned and in view of provisions given, they were required to give interim bond. Thus, there is no violation of Article 21 of the Constitution of India. This Court holds that it is not possible to grant both reliefs. In the result, both the Criminal Writ Petitions stand dismissed.

Sd./-

[**M.G. SEWLIKAR**]
JUDGE

Sd./-

[**T. V. NALAWADE**]
JUDGE