

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

CRIMINAL WRIT PETITION NO. 455 OF 2020

Narayan S/o Lahu Rathod
Age – 65 years, Occ. Agriculture,
R/o. Inami Tanda, Chincholi,
Tq. Wadawani, Dist. Beed. ... Petitioner

Vs.

The State of Maharashtra
Through Special Executive Magistrate
cum Police Inspector, Local Crime Branch,
Beed, Dist. Beed. ... Respondent

Advocate for Applicant : Shri Sudarshan J. Salunke
APP for Respondents: Shri R. D. Sanap

...

CORAM : B. U. DEBADWAR, J.

DATE : 23rd JUNE, 2020

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard both the sides by consent for final hearing.

2. Under this Criminal Writ petition, petitioner has challenged judgment and order dated 18-02-2020 passed by learned Additional Sessions Judge, Majalgaon in Criminal Revision No. 05 of 2020 whereby refused to quash and set aside order of his detention passed by Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed in the jail in Chapter case No. 01 of 2020.

3. Facts giving rise to present criminal writ petition in nutshell are as follows :

Writ petitioner is 65 years old senior citizen, resident of Inami Tanda, Chincholi, Tq. Wadawani, Dist. Beed. In pursuance of the first information report dated 04-05-2019 lodged by one Dnyaneshwar Kisan Rathod, crime bearing No.66 of 2019, registered against three persons including him for the offences punishable under Sections 307, 323, 504 read with Section 34 of Indian Penal Code at Wadawani Police Station, Dist. Beed. After registration of the said crime, on 20-08-2019 the Assistant Police Inspector, Wadawani Police Station, produced writ petitioner before Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed, along with report bearing No. 87 of 2019 under Section 107 of Code of Criminal Procedure, 1973. Upon receiving the said report, on the very day Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed passed the order under Section 111 of the Code of Criminal Procedure, 1973 holding that it is necessary to require writ petitioner to show cause as to why he should not be called upon to execute bond of keeping peace with surety and explained him substance of the said order. Subsequently, on same day, Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed, called upon writ petitioner to execute interim bond of keeping peace of Rs.15,000/-

and surety of Rs.10,000/-, after exercising powers under Section 116 (3) of Code of Criminal Procedure,1973, holding that it is necessary to do so, as immediate measure for prevention of breach of peace or disturbance of public tranquility or commission of any offence until inquiry of chapter case under Section 107 of Code of Criminal Procedure, 1973 is completed. Upon that, in view of the statement in writing dated 20-08-2019 made by the writ petitioner, the Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed, concluded the inquiry and got executed final bonds of aforesaid amount for keeping peace, from writ petitioner and his surety.

4. According to the record, after execution of final bond referred above, in pursuance of the first information report lodged by Sanjay Kisan Chauhan, resident of Inami Tanda, Wadawani, dated 08-11-2019, one more crime under Section 307, 143, 147, 148, 149 323, 504, 506 of the Indian Penal Code came to be registered against writ petitioner and other persons at Wadawani Police Station, Dist. Beed vide Crime No. 181 of 2019. During the course of investigation of the said crime on 24-01-2020, Assistant Police Inspector, Wadawani Police Station, Dist. Beed produced writ petitioner before Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed along with report bearing Chapter case

No. 01 of 2020 under Section 122(1)(b) of the Code of Criminal Procedure, 1973 for detaining him in prison as he has committed breach of final bond of keeping peace dated 30-09-2019. Immediately, on receiving said report Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed issued warrant under Section 122(1)(b) of Code of Criminal Procedure, 1973 for detention of writ petitioner in the jail till period of final bond referred above completes.

5. Being aggrieved by aforesaid detention warrant issued by Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed, writ petitioner approached to the Court of Additional Sessions Judge, Majalgaon, Dist. Beed and filed Criminal Revision Application under Section 397 of Code of Criminal Procedure, 1973. After hearing both the sides, learned Additional Sessions Judge, Majalgaon, Dist. Beed, pleased to maintain warrant by dismissing the revision.

6. Writ petitioner assailed the aforesaid judgment and order passed by learned Additional Sessions Judge, Majalgaon, Beed before this Court in this criminal writ petition.

7. Heard Shri Sudarshan J. Salunke learned counsel for writ petitioner and Shri R. D. Sanap, Additional Public Prosecutor for

respondent – State.

8. The crux of the matter lies in the fact whether impugned warrant dated 24-01-2020 issued by Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed is correct, proper and legal.

9. Learned Additional Sessions Judge, Majalgaon vide impugned judgment and order referred above, in paragraph 9 of the judgment held that offence registered under Crime No. 181 of 2019 and Crime No. 66 of 2019 are distinct and separate. Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed passed the order under Section 122(1)(b) of Code of Criminal Procedure, 1973 for breach of bond of keeping peace executed in chapter case No. 87 of 2019, initiated after registration of Crime No. 66 of 2019 and it has no concern with Crime No. 181 of 2019. Therefore, impugned order passed by Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed committing writ petitioner to prison for breach of the said bond is correct, proper and legal.

10. While talking through chapter 8 of Code of Criminal Procedure, 1973, more particularly Section 122 and impugned order passed by learned Additional Sessions Judge, Majalgaon, Beed, Shri Sudarshan J. Salunke Advocate for petitioner vehemently argued

that impugned order passed by Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed under which writ petitioner was detained in jail for breach of bond for keeping peace and confirmed the same by learned Additional Sessions Judge, Majalgaon, Beed, is per-se incorrect and illegal. Learned Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed failed to give opportunity of hearing to the writ petitioner before passing the said order which infringes his constitutional right of personal liberty. According to Shri Sudarshan J. Salunke, Advocate for petitioner, without passing order and recording the grounds on the basis of which it is passed, as contemplated in Section 122(1)(b) of Code of Criminal Procedure, 1973, learned Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed, directly took the writ petitioner in the custody and detained him in jail by issuing warrant and learned Sessions Judge wrongly confirmed the said action. In support of his submissions, Shri Sudarshan J. Salunke Advocate for the petitioner placed reliance on ratio laid down by the Hon'ble Supreme Court in the case of Hari @ Haridoss Vs. State of Tamil Nadu and Anr. 2016 ALL SCR (Cri) 1753.

11. Per contra, Shri R. D. Sanap, Learned APP argued that impugned order passed by Special Executive Magistrate cum Police

Inspector, Local Crime Branch, Beed and Additional Sessions Judge both are correct, proper and legal. After executing the bond for keeping peace in chapter case No. 87 of 2019 writ petitioner along with others committed another serious crime before expiry of period for which the said bond was executed. Having considered the same, learned Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed rightly passed the order of detention under Section 122(1)(b) of Code of Criminal Procedure, 1973 and learned Additional Sessions Judge rightly uphold the same.

12. Record speaks volumes that on 30-09-2019 writ petitioner executed final bond for keeping peace of Rs.15,000/- and one Rohit Pawar, his surety executed final bond of Rs.10,000/-, prior to that they both had executed interim bonds of the same amount, on 20-08-2019. Writ petitioner has not raised any grievance about the chapter case No.87 of 2019 registered against him after registration of Crime No.66 of 2019 and order passed by Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed in the said proceedings. He has raised grievance pertaining to his detention vide order dated 24-01-2020 under Section 122(1)(b) of Code of Criminal Procedure, 1973. Therefore it is necessary to go through Section 122(1)(b) which read as under :

"If any person after having executed a bond, with or without sureties, for keeping the

peace in pursuance of an order of a Magistrate under Section 117, is proved, to the satisfaction of such Magistrate or his successor-in-office, to have committed breach of the bond, such Magistrate or successor-in-office may, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond and such order shall be without prejudice to any other punishment or forfeiture to which the said person may be liable in accordance with law."

13. Upon going through aforesaid provision it becomes clear that before passing the order of detention, it is necessary on the part of the Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed to satisfy himself about breach of bond for keeping peace executed by the person in pursuance of the order under Section 117 of Code of Criminal Procedure, 1973 and record the grounds of satisfaction.

14. In the case at hand, learned Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed issued warrant of detention immediately after producing the writ petitioner before him with report bearing No. 01 of 2020. Record clearly speaks that before issuing the said warrant of detention, neither show cause notice was given to the writ petitioner nor he was heard. Learned Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed appears to have jumped to the conclusion

of breach of bond for keeping peace executed by the writ petitioner, only relying on the first information report on the basis of which Crime No. 181 of 2019 came to be registered.

15. Admittedly, this Court (Coram : R. G. Avachat, J.) after perusing the papers of the said crime vide order dated 06th January, 2020, enlarged petitioner on anticipatory bail observing that neither incriminating overt act attributed to the writ petitioner nor he was given opportunity of hearing before passing impugned order under Section 122(1)(b).

16. In the case of Pravin Vijaykumar Taware and Others Vs. The Special Executive Magistrate, Dist. Pune and another reported in 2009 ALL MR (Cri) 2093, Division Bench of this Court at Principal Seat, while demonstrating as to how Executive Magistrate abuse the powers under Chapter VIII of Code of Criminal Procedure, 1973 held as under :

"After hearing the learned Public Prosecutor and also the Executive Magistrate, who was also present in the Court, we give benefit of doubt to the Magistrate on the ground that perhaps these Magistrates are not aware of the law. They are not trained to act as Magistrate. We understand they have not undergone any training before they were given the powers of a Magistrate. When a person is appointed or posted as an Assistant Commissioner of Police, he is almost mechanically appointed as an Executive

Magistrate and is given authority to execute powers under Chapter VIII of the Criminal Procedure Code. Since the Government is not interested in taking away these powers from the Police Officers and handover the powers to judiciary or to revenue officials, we are inclined to give the following directions :

(1) That the State Government shall immediately take steps to train its all Executive Magistrates so that they understand as to how the provisions of Chapter VIII of the Criminal Procedure Code have to be applied.

(2) We understand that there is a police academy in the State. All the Executive Magistrate should undergo a crash course. Preferably the Sessions Judges should be invited to teach these Magistrate about the nuances of law, so that the powers are not abused or misused by the Executive Magistrate.

(3) Whenever, an order is passed by a Magistrate at interim stage or at final stage requiring a person to give a bond, he shall be given sufficient time to furnish the bond and the surety.

(4) At the stage of inquiry, the Magistrate shall not ask for an interim bond pending inquiry unless the Magistrate has satisfied himself about the truth of the information sufficient to make out a case for seeking a bond.

(5) Whenever, an Executive Magistrate passes an order under sub-section (3) of Section 116 of Chapter VIII of the Criminal Procedure Code directing a person to be sent to jail, a copy of the order shall be sent to the learned Principal Sessions Judge immediately.

(6) On receiving copy of the order, the learned Principal Sessions Judge shall go through the order and if he finds a case of revision, he may intervene under Section 397 of the Criminal

Procedure Code.

(7) A copy of the order directing a person to be sent to jail under Chapter VIII of the Criminal Procedure Code shall also be sent to the immediate superior of the Magistrate in his Department."

17. In the case at hand, impugned warrant of detention came to be issued by Police Officer of Inspector rank, conferred with the powers of Special Executive Magistrate, and he too has not followed said direction while passing order of detention under Section 122(1)(b) of Code of Criminal Procedure, 1973.

18. In the case of Hari @ Haridoss Vs. State of Tamil Nadu and Anr. 2016 ALL SCR (Cri) 1753, Hon'ble Supreme Court while dealing with the similar issue held that passing detention order without issuing show cause notice or without giving opportunity of hearing, is clearly in violation of procedure contemplated in Section 122(1)(b) of Code of Criminal Procedure, 1973, and accordingly, quashed the said order and released appellant of the said case from custody.

19. The aforesaid ratio laid down by Hon'ble Supreme Court squarely applies to the present case. In present case also impugned order under Section 122(1)(b) of Code of Criminal Procedure, 1973, came to be passed, against writ petitioner without

giving show cause notice or without giving opportunity of hearing, therefore, not sustainable. Learned Additional Sessions Judge, Majalgaon, Beed failed to appreciate this important aspect and wrongly confirmed impugned order. Observations made by learned Additional Sessions Judge, Majalgaon that both the offences are different and distinct, Hon'ble High Court granted anticipatory bail to the writ petitioner in crime No. 181 of 2019 but the respondent Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed passed the order in Crime No. 66 of 2019 in Chapter proceeding under Section 122(1)(b) of Code of Criminal Procedure, 1973 and there is no illegality or perversity in impugned order, are contrary to the record.

20. Learned Addition Sessions Judge, Majalgaon failed to understand that Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed forfeited final bond executed by writ petitioner in Chapter No. 87 of 2019, initiated after registration of Crime No. 66 of 2019, alleging that before completion of period of said bond, writ petitioner committed one more crime bearing Crime No. 181 of 2019 and thereby committed its breach and made aforesaid observations which are per-se wrong.

21. Thus, having regard to the totality of facts and circumstances referred above, I have no hesitation to hold that the

order passed by Special Executive Magistrate cum Police Inspector, Local Crime Branch, Beed, under Section 122(1)(b) of Code of Criminal Procedure, 1973 in Chapter case No. 01 of 2020 and judgment and order passed by learned Additional Sessions Judge, Majalgaon, Beed in Criminal Revision Application No. 05 of 2020 are incorrect, improper and illegal. Therefore, the impugned orders are liable to be quashed and set aside. Accordingly, I pass following order :

O R D E R

1. Writ petition is allowed in terms of prayer clause 'C' and 'E'.
2. Rule made absolute in those terms.

(B. U. DEBADWAR, J.)

SVH