

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

CRIMINAL WRIT PETITION NO.578 OF 2021

Arun Vitthalrao Borde,
Age : 44 years,
Occ. Business and Social Worker,
r/o. Kranti Nagar,
Behind Session Court,
Adalat Road, Aurangabad

..Petitioner

Vs.

The State of Maharashtra,
and others

..Respondent

Mr.S.G.Ladda and Mr.Sagar S. Ladda, Advocates for petitioner
Mrs.G.L.Deshpande, APP for respondents

**CORAM : R.G. AVACHAT, J.
RESERVED ON : JUNE 22, 2021
PRONOUNCED ON : JULY 03, 2021**

ORDER :-

The challenge in this Writ Petition is to the show-cause notice dated 08.04.2021 issued by the Special Executive Magistrate, Aurangabad, in Case No.569 of 2020. Vide the notice impugned in this petition, the petitioner has been called upon to show cause, as to why the bond dated 26.11.2020 executed by him for good behavior, shall not be forfeited.

2. Heard. Perused the impugned notice and the documents relied on.

3. Mr.Laddha, learned counsel for the petitioner, would submit that the petitioner is a member of a political outfit – M.I.M. The petitioner has been actively participating in voicing citizens’ concerns. The petitioner would do his activities in a democratic manner. The criminal justice system has been weaponized against the petitioner with a view to dissuade him from voicing the public issues. Turning to the merit of the matter, learned counsel would submit that the petitioner has not committed breach of the conditions of the bond. Section 117 of the Code of Criminal Procedure (“the Code”, for short) makes a distinction between the bond of keeping peace and maintaining good behavior. Even the formats of both the bonds are different one. According to learned counsel, post execution of the bond, the petitioner has been falsely implicated in two criminal matters: one is non-cognizable case and in the other matter, this Court has protected his liberty by granting him anticipatory bail.

Learned counsel for the petitioner relied on the following authorities and ultimately, urged for setting aside the impugned notice:-

- (i) Raigir Balaiah Vs. State of Telangana and ors., 2016 SCC OnLine Hyd 679;
- (ii) Chandrakant Dharni Bharmaji Vs Special Executive Magistrate, Crimes, and anr., 2002 SCC OnLine Bom 860;
- (iii) Honestraj Vs. Executive Magistrate and anr., 2020 SCC OnLine Mad 2757;
- (iv) Karthigayan Vs. The Sub-Divisional Magistrate-Cum-Revenue Divisional Officer, Thanjavur, Thanjavur District, 2015 SCC OnLine Mad 2417;

4. Learned APP would, on the other hand, submit that the Writ Petition is premature one. The impugned notice has been issued to the petitioner to show cause as to why the bond executed by him shall not be forfeited. If the bond executed by the petitioner is, ultimately, cancelled, he is not remedyless. The petitioner has been involved in criminal activities, which constitute breach of the bond executed by him for keeping good behavior. Learned APP, therefore, urged for dismissal of the petition.

5. It appears that the petitioner had not challenged the proceedings wherein he was directed to execute the bond to be of good behavior. The impugned notice dated 08.04.2021 records that a non-cognizable case (No.49 of 2021) and a cognizable case, being C.R. No.23 of 2021, have been registered against the petitioner post execution of the bond to be of good behavior. The registration of the crimes indicate the petitioner to have committed breach of the bond. He was, therefore, issued a show-cause notice, as to why the bond shall not be forfeited and the amount of the bond i.e. Rs.One Lakh, be not recovered.

6. True, this Court has granted the petitioner anticipatory bail in Crime being C.R. No.23 of 2021. It, however, does not mean to have given him a clean chit or observed him to have not committed the alleged offence/s. In my view, the petition is premature. The petitioner has every remedy to challenge the order, if the bond executed by him is forfeited.

7. Section 120 of the Code speaks of the contents of bond. It reads thus :-

120. Contents of bond.- The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the Abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond

In case of a bond executed to be of good behavior, the commission or attempt to commit or abetment of any offence punishable with imprisonment, constitute a breach of the bond.

8. In the case of **State Vs. Thomas Mathai and anr., 1957 Cri. L.J. 164**, it has been observed thus:-

"....What is to be proved is that the executant of the bond has committed or attempted to commit or has abetted the commission of an offence punishable with imprisonment as indicated by Section 121. It cannot be said that his conviction by a competent Court would alone amount to proof of such a conduct on his part. Forfeiture of the bond is independent of the prosecution for any of the offences

mentioned in Section 121. Such prosecution may result in a conviction followed by an appropriate sentence while forfeiture of the bond will lead only to a levy of the penalty as provided for in the bond."

9. I have perused the authorities relied on by learned counsel for the petitioner. In the case of **Raigir Balaiah** (supra), the bond executed by the petitioner therein was forfeited and the petitioner was ordered to pay a sum of Rs.One Lakh. In the case of **Chandrakant Dharni Bharmaji** (supra), the challenge was to the order directing the petitioner therein to furnish a bond of good behavior. In the case in hand, the bond had already been executed and breach thereof, is alleged. In the case of **Honestraj** (supra), the petitioner therein has executed a bond for good behavior, for the breach of which he cannot be convicted and sentenced for the offence punishable under Section 122(1)(b) of the Code. On account of having been committed breach of the bond of good behavior, he was sentenced to imprisonment. While, in the case of **Karthigayan** (supra), assuming that the petitioner therein to

have committed breach of the bond of good behavior, he was taken into custody. So is not the case herein.

10. It is reiterated that by the impugned notice, the petitioner has simply been called upon to show cause as to why the bond executed by him to be of good behavior shall not be forfeited. The petitioner has, thus, been offered an opportunity of hearing. The petitioner has every opportunity to put forth his case. If the Special Executive Magistrate is satisfied with the cause that can be shown by the petitioner, the bond executed by him may not be forfeited. The petition is, thus, premature and therefore, liable to be dismissed.

11. The petition, thus, fails and the same is dismissed.

[R.G. AVACHAT, J.]

KBP