

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

CRIMINAL WRIT PETITION NO. 2032 OF 2019

Bhaskar S/o Sarjerao Darade
Age: 48 years, Occ. Agri.,
R/o: Pagori Pimpalgaon, Tq. Pathardi,
District: Ahmednagar.

... **Petitioner**

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. The Superintendent of Police,
Ahmednagar, District: Ahmednagar.
3. The Police Inspector,
Pathardi Police Station,
Tq. Pathardi, Dist. Ahmednagar.
4. The Sub-Divisional Police Officer,
Shevgaon Division Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar.
5. Shri. Pandurang Pawar
The then Police Inspector,
Pathardi Police Station,
At present C/o Superintendent of Police,
Ahmednagar officer, Ahmednagar.
6. Babasaheb S/o Banaras Bhosale
The then Police Head Constable/424
Pathardi Police Station,
At present Akole Police Station,0
Tq. Akole, Dist. Ahmednagar.

... **Respondents**

...
Advocate for Petitioner : Mr. N. B. Narwade
APP for Respondent Nos. 1 to 6/State : Mr. M. M. Nerlikar
...

**CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**
DATE OF RESERVING THE JUDGMENT : 13.01.2021
DATE OF PRONOUNCING THE JUDGMENT : 05.02.2021

JUDGMENT : (Per: *M.G. Sewlikar, J.*)

Rule. Rule is made returnable forthwith. Learned A.P.P. waives service for the State. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioner has filed this writ petition under Article 226 of the Constitution of India for compensation for illegal detention of his minor son.

3. Facts leading to this petition can be briefly stated as under.

4. The informant in the FIR No.583/2016 by the name of Vinod Garje runs a Pediatric Hospital on the Government land. It is the allegation of the petitioner that the informant is trying to encroach upon the Government land. On 29.12.2016, the petitioner and others trespassed into the hospital

and assaulted the informant on account of which FIR No.583/2016 came to be registered against the petitioner, his wife and son-Dnyaneshwar.

5. The date of birth of Dnyaneshwar is 26.09.1999. The son of the petitioner was accordingly arrested on 29.12.2016 by Police Station Pathardi showing age of the said Dnyaneshwar as 21 years when in fact his age was 17 years 3 months. The said Dnyaneshwar was produced before the Magistrate on 30.12.2016. The learned Magistrate remanded Dnyaneshwar to police custody till 31.12.2016. On 31.12.2016 Dnyaneshwar was remanded to magisterial custody. Section 3 and 4 of Maharashtra Medical Practitioner Act came to be added in FIR No. 583/2016.

6. On 30.12.2016 another offence came to be registered against the said Dnyaneshwar on the basis of complaint of one Vaishali w/o Vinod Garje under Section 323, 504, 506 of the I.P.C. vide Crime No.585/2016. While producing before the learned Magistrate, Pathardi, age of the said Dnyaneshwar was shown to be of 18 years. During the proceedings of this remand in Crime No.583 of 2016, it was brought to the notice of the learned J.M.F.C. that Dnyaneshwar was a minor. Therefore, learned Magistrate remanded the said Dnyaneshwar to magisterial custody and sought explanation of the Investigating Officer as regards the age of the said

Dnyaneshwar. The said Dnyaneshwar was directed to be produced before the Juvenile Justice Board (JJB). Accordingly, Dnyaneshwar was produced before the Juvenile Justice Board.

7. Dnyaneshwar was detained in police custody for two days despite he being a minor. The petitioner made application to the Superintendent of Police, Ahmednagar and also to State Human Rights Commission but none of them took cognizance. Hence, the petitioner has filed this writ petition.

8. Heard Shri Narwade learned counsel for the petitioner and Shri M.M. Nerlikar learned APP for the State.

9. Shri Narwade submitted that Dnyaneshwar was minor at the time of the incident and even at the time of his arrest and production before the learned Magistrate. Despite this, Dnyaneshwar was produced before the Magistrate showing the age of Dnyaneshwar as 21 years. He further submitted that when Dnyaneshwar was produced before the Magistrate in another offence i.e. Crime No.585/2016, age of the said Dnyaneshwar was shown as 18 years. He argued that this clearly shows that despite having knowledge that the said Dnyaneshwar was minor he was arrested showing him as major. He further argued that because of his detention the said Dnyaneshwar could not fare properly in the Board Examination of 12th

standard and that affected his performance adversely. The petitioner has therefore, prayed for compensation of Rupees Twenty Five Lakhs.

10. Shri M.M. Nerlikar submitted that on 30.12.2016 Dnyaneshwar was produced before the learned Magistrate. Accused no.3 in Crime No.583 of 2016 is an advocate by profession. Despite this, accused no.3 did not bring it to the notice of the Investigating Officer that Dnyaneshwar is a minor. He argued that even before the learned Magistrate dealing with remand in Crime No.583/2016 issue about the minority of Dnyaneshwar was not raised. He submitted that since the Investigating Officer came to know that the said Dnyaneshwar was minor he corrected the age in the second remand. He argued that the said Dnyaneshwar has all along maintained that he was 21 years of age and just to get the compensation he is now trying to take benefit of his own wrong. He submitted that the Investigating Officer did not commit any error in showing the age of Dnyaneshwar as 21 years. Therefore, the petition is devoid of any substance and it deserves dismissal.

11. On perusal of the papers, it is seen that the age of the said Dnyaneshwar was 17 years 3 months on the date of the offence. His date of birth is 26.09.1999. It is not the contention of the State that in the inquiry conducted by the Juvenile Justice Board, Dnyaneshwar was found to be major.

Thus, the State does not dispute that on the date of offence and on the date of arrest Dnyaneshwar was minor. All these facts are admitted. Dnyaneshwar was arrested on 30.12.2016 in Crime No.583/2016. He was produced before the Magistrate on 30.12.2016. Order of remand passed by learned Magistrate shows that Dnyaneshwar was shown as major i.e. of 21 years of age. Therefore, the Magistrate remanded the said Dnyaneshwar to police custody. On 31.12.2016, again the said Dnyaneshwar was produced before the Magistrate. At that time also his age was shown as 21 years. Dnyaneshwar was arrested in Crime No.583/2016 and was produced before the Magistrate on 31.12.2016. At that time, issue of age of Dnyaneshwar was raised. The learned Magistrate noticed from the school leaving certificate that Dnyaneshwar was minor and therefore he passed the following order:

“The Ld. Advocate for accused informed the Court that the accused No.3 is juvenile. For his submission he has submitted school leaving certificate of accused No.3. The IO has shown the age of accused No.3 as 21 in first remand report and 18 in today's remand report. Considering the school leaving certificate, it appears that accused No.3 is juvenile.

Therefore accused No.3 needs to be transferred to Juvenile Board. The concerned IO is directed to produce accused No.3 before Juvenile Board. Issue notice to concerned IO to give his explanation about age of accused no.3.”

12. Admittedly, Dnyaneshwar was minor at the time when he was produced before the learned Magistrate. The chronology of events show that in the remand report dtd.30.12.2016 and 31.12.2016, age of minor was shown as 21 years of age. All of a sudden, age of minor was shown as 18 years when he was produced before the Magistrate on 01.01.2017 in remand report in Crime No.585/16. What prompted the Investigating Officer to show the age of Dnyaneshwar as 18 years is not on record. This chronology of events prompts us to draw the inference that the Investigating Officers in both the crimes were aware that Dnyaneshwar was minor at the time of the incident. It was argued by the learned APP that accused no.3 is an Advocate by profession. In all probability, he would certainly have raised the issue of minority of Dnyaneshwar. This submission cannot be accepted. The issue of minority of Dnyaneshwar was raised during the proceedings of remand in Crime No.585/16. If accused no.3 had any evil intentions, he would not have raised this issue even at the time of remand in Crime No.585/16. Therefore, it is difficult to believe that Dnyaneshwar did not state correct age before the Investigating Officer at the time of his arrest.

13. This discrepancy in two reports clearly indicate that the Investigating Officer was not sure about the age of said Dnyaneshwar. In these circumstances, they were duty bound to inquire into the age of said

Dnyaneshwar to find out whether Dnyaneshwar was a minor. Accused Dnyaneshwar was minor on the date of his arrest and production before the Magistrate. Admittedly, accused Dnyaneshwar was remanded to police custody and he was kept in police custody for two days. Therefore, in accordance with the principles of strict liability State is enjoined to pay the compensation. Learned counsel Shri Narwade argued that applicant could not deliver his best due to his arrest and detention in police custody which caused severe mental trauma to him which led to his decline in the performance. No evidence is adduced in this respect. Having regard to the fact that he was detained illegally for a period of two days, we are inclined to grant compensation of Rs. 10,000/- (Rupees Ten Thousand Only).

14. In view of the above, the petition is allowed. The Respondent No.1-State is directed to pay compensation to the petitioner of Rs. 10,000/- (Rupees Ten Thousand Only) within a period of three months. State is at liberty to recover the compensation from respondent nos.5 and 6.

15. Rule made absolute in those terms.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]