

Digitally
signed by
DINESH
SADANAND
SHERLA
Date:
2021.10.04
14:41:17
+0500

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2071 OF 2021**

Amol @ Avikumar Dhondiram Dhule ..Petitioner
vs.
The State of Maharashtra & Ors. ..Respondents

Mr. Vinod Gangwal a/w. Mr. Sunny Waskar and Himalee Divekar for the Petitioner.

Mr. Arfan Sait, APP for the Respondent Nos.1 and 2– State.

Mr. Vikram Sutaria for Respondent No.3- Intervener.

Mr. Vijay C. Chavre , EOW Mumbai present.

Mr. Bharat B. Kalare, Taloja Central Jail present.

**CORAM : PRASANNA B. VARALE &
N.R.BORKAR, JJ.**

**RESERVED ON : 13.08.2021.
PRONOUNCED ON : 04.10.2021.**

JUDGMENT : (PER : N.R.BORKAR, J)

1] The petitioner, who is an accused in Crime No. 176 of 2018 registered at Cuffe Parade Police Station for the offences punishable under sections 465, 466, 468, 471 and 420 of the Indian Penal Code (IPC), has filed the present petition with following prayer:

“a. That this Hon’ble Court be pleased to issue writ, order or direction in the nature of habeas corpus commanding the opposite parties to produce petitioner before this Hon’ble Court and after examining legality, validity and propriety of the continued unauthorised detention produce the petitioner forthwith and thereafter release the petitioner on such terms and conditions, as this Hon’ble Court may deem fit and proper”.

2] The aforesaid crime came to be registered on the the basis of report lodged by one Shri. Gautam P. Bhudrani. The said Gautam Bhudrani has alleged that he had purchased land bearing Survey No. 436/1/A and 427/1 at village Wahal, Tal. Panvel, Dist. Raigad. He wanted certain clearances/permissions from the government departments in relation to the said lands. The petitioner/accused who was introduced to him by his Architect friend represented to him that he has many contacts with the concerned persons in the Office of Collector at Raigad so also with the Deputy Conservator of Forests, Alibag and assured him that he will be in a position to get the necessary and relevant permissions pertaining the above said land. Relying on the representation made by the petitioner/accused, he paid him an advance of Rs.3,53,10,000/-. The petitioner/accused gave certain orders passed by the Additional Collector, Raigad to him. After verifying the documents, he found that documents given by the petitioner/accused were forged. When he made enquiry in the vicinity, he found that the petitioner/accused has cheated many persons by adopting same *modus operandi*.

3] The grievance of the petitioner/accused is that on 39 occasions, the learned Magistrate extended his judicial custody in a casual manner even though on the said 39 occasions he was not produced before the learned Magistrate either physically or through video conferencing. It is submitted that the detention of the petitioner/accused is thus illegal and the respondents be directed to release the petitioner/accused forthwith. It is submitted that in such circumstances, the petition for

habeas corpus is maintainable. In support of submissions, reliance is placed on the judgment reported in **2012 BomCR (Cri.) 402** in the case of **Sonu Madanlal Yogi vs. State of Maharashtra and ors..**

4] It is further submitted that the report (charge-sheet) submitted by the respondents dated 16.11.2019 is not final report within the meaning of Section 173 (2) read with section 2 (r) of the Cr.P.C. It is submitted that even till today, the final report is not filed. It is submitted that the learned Magistrate has not taken cognizance on the basis of said incomplete charge-sheet and therefore, the detention of the petitioner/accused beyond 90 days as provided under section 167(2) of the Cr.P.C. is illegal. It is thus, submitted the petitioner/accused needs to be released forthwith.

5] On the other hand, the learned APP on behalf of the respondent – State has submitted after conducting the necessary investigation, charge-sheet has been filed against the petitioner/accused on 16.11.2019 in the court of learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai. It is further submitted that as there were some more points to be investigated, permission of learned Magistrate was sought to conduct further investigation in terms of section 173(8) of Cr.P.C.

6] It is submitted that after arrest of the petitioner/accused necessary applications were moved for extension of the custody before

the learned Magistrate and the custody of the petitioner/accused was extended by the learned Magistrate till filing of the charge-sheet. It is further submitted that in addition to above crime, there are 10 more similar crimes in which the petitioner/accused is involved. It is submitted that the present petition is thus nothing but an abuse of process of court and same may be dismissed.

7] According to the petitioner/accused, the learned Magistrate on 39 occasions extended his custody, though he was not produced before the learned Magistrate either physically or through V.C. It is not the grievance of the petitioner/accused that there is no order extending his custody. If according to the petitioner/accused, his custody was extended in violation of provision of law, then he ought to have challenged that order. The petitioner/accused has however, not challenged the said orders. The custody/detention of the petitioner, therefore, cannot be said to be illegal.

8] According to the petitioner/accused, the report (charge-sheet) filed by the respondents/State is not final report within the meaning of section 173(2) of the Cr.P.C. and thus his detention beyond 90 days as provided under section 167(2) of Cr.P.C. is illegal. It appears that the petitioner/accused has filed default bail application before the learned Metropolitan Magistrate and the learned Magistrate rejected the said default bail application by order dated 6.5.2021. Admittedly, the petitioner/accused has not challenged the said order and it appears

that the petitioner/accused has filed the present petition only after his various bail applications came to be rejected either by this Court or Sessions Court.

9] It appears that the petitioner/accused is in habit of abusing the court process. The learned Single Judge of this Court, while dealing with Criminal Bail Application No. 1578 of 2020 of the present petitioner/accused, has observed :

"1. The Applicant had earlier approached this Court for his release on bail vide Criminal Bail Application (Stamp) No.1614/2020. This Court had passed the following order on 11.9.2020:

"1. After arguing for some time when I expressed my disinclination to grant relief, learned counsel for the Applicant prays for withdrawal of the application with liberty to approach this Court again for the same relief after a reasonable time.

2. Considering his request, his application is allowed to be withdrawn. The Applicant is permitted to approach this Court again for relief of bail in case his trial does not begin before 31/05/2021.

3. In case of changed circumstances the Applicant is at liberty to approach this Court even before that day. In the aforesaid terms the application is disposed of.

4. Interim application does not survive and is disposed of."

2. It was clearly mentioned in that order that the Applicant was permitted to approach this Court again for the relief of bail in case his trial does not begin before 31.5.2021. Instead of waiting for that period to get over, the Applicant directly approached the Court of Additional Chief Metropolitan Magistrate, 47 th Court, Esplanade, Mumbai for his release on bail.

3. Learned Counsel for the intervenor submitted that the Applicant has suppressed this order from the Court of Metropolitan Magistrate.

4. I have perused the order passed by the learned Magistrate in Bail Application No.210/BA/2020 dated 5.12.2020. In that application, there is no reference that the Applicant had pointed out the order passed by this Court to the learned Judge. Instead,

the matter was again fully argued on merits. This is nothing but suppression of material facts from the Court. It is another matter that the learned Magistrate has also rejected the matter on merits.

5. *Even today, when learned Counsel for the Applicant started arguing the matter he submitted that he has preferred this application on medical grounds. In the entire memo from grounds (A) to (L), there is not a single ground regarding his medical condition. All the grounds are taken in respect of merits of the case.*

6. ***This is nothing but abuse of process of law** and, therefore, I am not inclined to entertain this application. The Application is dismissed. The practice adopted by the Applicant is strongly deprecated. However, on humanitarian grounds, the Applicant is granted liberty to prefer appropriate proceedings in case of medical emergency. The jail authorities shall provide all the necessary medical facilities to the Applicant.*

10] Considering the above facts and circumstances, we are not inclined to entertain the present petition. In the result, the following order is passed :

ORDER

Writ Petition is dismissed.

[N.R.BORKAR, J]

[PRASANNA B. VARALE, J.]