

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

CRIMINAL WRIT PETITION NO.1720 OF 2019

- 1 Chandrashekhar Madhukar Gurav,
Age 47 yrs., Occ. Agri.,
- 2 Vivek Madhukar Gurav,
Age 42 yrs., Occ. Agri.,
- 3 Santosh Madhukar Gurav,
Age 54 yrs., Occ. Agri.,
- 4 Sharad Madhukar Gurav,
Age 62 yrs., Occ. Agri.,
- 5 Vaishali w/o Sharad Gurav,
Age 60 yrs., Occ. Household,
- 6 Meena w/o Santosh Gurav,
Age 38 yrs., Occ. Household,
- 7 Pranali w/o Vivek Gurav,
Age 30 yrs., Occ. Household,
- 8 Tukaram Sharad Gurav,
Age 27 yrs., Occ. Agri.,

All are r/o Hinglajwadi,
Tq. & Dist. Osmanabad.

... **Petitioners**

... **Versus** ...

- 1 The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai.

- 2 The Police Inspector,
Dhoki Police Station,
Tq. & Dist. Osmanabad.
- 3 Shailesh S. Katte,
A.S.I., Police Station,
Osmanabad (Rural),
Tq. & Dist. Osmanabad.

... **Respondents**

...

Mr. S.C. Swami, Advocate for the petitioners
Mr. B.V. Virdhe, APP for respondent Nos.1 to 3

...

**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

RESERVED ON : 29th JULY, 2022

PRONOUNCED ON : 23rd SEPTEMBER, 2022

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates
for the parties finally, by consent.

2 The petition has been filed invoking constitutional powers of this
Court under Article 226 of the Constitution of India for giving direction to the
respondent No.1 to initiate appropriate action against those police officers
who had illegally misused their powers and for the compensation to the
petitioners towards the harassment at the hands of those police officers to the

tune of Rs.10,00,000/-.

3 Heard learned Advocate Mr. S.C. Swami for the petitioners and learned APP Mr. B.V. Virdhe for respondent Nos.1 to 3.

4 The factual matrix leading to the petition are that First Information Report vide Crime No.286/2018 came to be registered with Dhoki Police Station, Tq. & Dist. Osmanabad, for the offence punishable under Section 143, 147, 148, 149, 504, 506 of the Indian Penal Code on 12.12.2018 at about 3.45 a.m. It was in respect of an incident that had allegedly taken place at about 19.25 hours on 11.12.2018. It was lodged by one Vyankat Limbraj Wakure. It also appears that at the behest of the petitioner No.6 offence was also registered vide Crime No.285/2018 with the same Police Station i.e. Dhoki Police Station at about 2.27 a.m. on 12.12.2018 under Section 354, 354-A, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code in respect of incident dated 11.12.2018 at about 19.00 to 19.30 hours, which is against different persons than those referred in Crime No.286/2018. According to the petitioners, no immediate action was taken against those accused persons who were arrayed in Crime No.285/2018. However, the petitioners came to be arrested at about 7.02 a.m. on 12.12.2018 and inspite of the fact that there were three lady accused

no Lady Police Constable or officer was present. The petitioners were produced before learned Magistrate on 13.12.2018 at about 3.30 p.m. which is beyond the period of 24 hours permitted by the Constitution of India and, therefore, their detention was illegal, which was more than 24 hours. As the constitutional rights of the petitioners have been violated, the petitioners are seeking the above said reliefs.

5 Learned Advocate for the petitioners has taken us through the remand report which is styled as “MCR Yadi” dated 13.12.2018, in which the date and time of arrest has been stated as 12.12.2018 and time 07.08 hours. He has also stated that, in fact, there were absolutely no proper grounds for the arrest of the petitioners; yet, those grounds of arrest were not properly considered and by interpolation the arrest has been shown as that of 17.18 hours of 12.12.2018. Even the petitioners had tried to take CCTV footage of the Police Station, but it has been informed that the back up of the said CCTV is of 10 days only and since the application that was given on behalf of the petitioners was beyond the said period of 10 days it cannot be supplied. No Lady Police Officer was with the lady accused and, therefore, there is clear violation of the constitutional rights.

6 Learned Advocate appearing for the petitioners has relied on the

decision in **Kisan Rupa Pawar and another vs. The State of Maharashtra and others**, Criminal Writ Petition No.955 of 2019 decided by this Court on 05.11.2019, wherein after holding that the petitioners therein were illegally put in police lock up for more than four hours compensation of Rs.10,000/- was granted to petitioner No.1 and Rs.15,000/- to the petitioner No.2.

7 Learned APP has relied on the affidavit-in-reply filed by Shrishailya Siddhappa Katte working as Assistant Sub Inspector with Osmanabad Rural Police Station. He has stated that it was due to inadvertence. The time of arrest has been stated in the MCR report as 07.02 hours but actual time is 17.18 hours. He has produced on record the copies of arrest panchnamas to support his contention. From 17.18 hours on 12.12.2018 till 3.30 p.m. of 13.12.2018 it would be within 24 hours of arrest the accused persons were produced before the concerned Magistrate. It is stated that all the guidelines of arrest have been followed. The fact of arrest was informed to the near relatives of the accused. The reasons for arrest were separately given before the Magistrate, and at the time of the arrest of the lady accused persons Lady Police Constable was not present. By way of additional affidavit it has been stated that since the dispute/quarrel between two rival groups had taken place by forming unlawful assembly, if arrest would not have been made, then, it could have created law and order

situation and, therefore, the arrest was made.

8 Learned APP has taken us through the arrest form/panchnama, the station diary entry, register of arrest and certain general diary details. When the learned Judicial Magistrate First Class, Osmanabad had endorsed on the ground of arrest that they are justified, then, the petitioners cannot re-agitate. Petitioners had every opportunity to place their grievances before the concerned Magistrate. However, from the remand report order it can be seen that they had not made any complaint of ill-treatment. Now, it appears that with some ulterior motive the present petition has been filed. Learned APP also pointed out that now the State Police Complaint Authority has been established and the petitioners can approach that authority to file any complaint. Reliance has been placed on the order passed by the Division Bench at Principal Seat in **Bommer Limbadri Vithal vs. The State of Maharashtra and others**, Criminal Writ Petition No.4214 of 2014 dated 20.04.2017, wherein a statement was made by learned Advocate General that the Divisional Police Complaint Authorities are concerned, the Chairpersons are appointed in all six Divisions and then, at that time, at some places it was yet to function, but, now, at all the places the said authority is functional. In that case liberty was granted to the petitioner to approach the State Police Complaint Authority.

9 It is apparent from the record that has been produced that there were cross complaints. One Meena Santosh Gurav, who is present petitioner No.6, had lodged First Information Report vide Crime No.285/2018 with the same Police Station i.e. Police Station, Dhoki, Dist. Osmanabad at about 2.27 a.m. on 12.12.2018, for the offence punishable under Sections 354, 354-A, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860 in respect of the incident that had allegedly taken place at about 19.00 to 19.30 hours on 11.12.2018 at village Hinglajwadi and thereafter at about 3.45 a.m. Crime bearing No.286/2018 came to be lodged against the present petitioners on the basis of First Information Report lodged by Vyankat Limbraj Wakure, for the offence punishable under Sections 143, 147, 148, 149, 504, 506 of the Indian Penal Code, 1860. It appears from documents which have been produced along with the petition that the time of arrest of the petitioners has been shown as 7.02 a.m. on 12.12.2018 and it is stated that they were produced before the concerned Judicial Magistrate First Class at 3.30 p.m. on 13.12.2018 and on the basis of these documents the petitioners are contending that their production before the learned Magistrate was beyond the period of 24 hours. In the affidavit-in-reply filed by Assistant Sub Inspector Mr. Shrishail Sidhanappa Katte of the said Police Station, he has explained that it was the typographical mistake remained to be corrected that one of the papers, which showed that the arrest was at 7.02

a.m. He has produced on record the case diary, arrest forms and other documents to show that, in fact, the petitioners were arrested at 17.18 hours on 12.12.2018. Interesting point to be noted is that the documents, which are along with the charge sheet including the documents about production of the petitioners before the Magistrate i.e. the remand report, are clearly stating that they were arrested at 17.18 hours. No doubt, some of the papers do carry blank spaces and those papers have been produced by the petitioners. A separate application giving reasons for arrest of the petitioners was produced before the learned Magistrate and those reasons have been accepted by learned Magistrate as genuine reasons. The order that has been passed is, "Grounds of arrest are justified. Hence granted." and the said application has been granted on the same day i.e. on 13.12.2018, at the time of remand. Interestingly, when the petitioners were produced before learned Magistrate, it appears that they were represented by Advocate, but they have not made any complaint in respect of their arrest before the learned Magistrate. It was the first opportunity available to them to bring all those facts on record. It appears that now taking advantage of some of the typographical mistakes, the present petition has been filed.

10 Further, as regards the allegation that arrest was not necessary and the guidelines given in **Armesh Kumar vs. State of Bihar, 2014(8) SCC**

273 have not been followed; as aforesaid, the learned Magistrate had applied his mind and found that the grounds those were given by the Investigating Officer/arresting Police Officer as correct or justified and when no dispute was raised or complaint was made, now, it cannot lie in the mouth of the petitioners that their arrest is illegal. The illegality of the arrest has to be raised at the earliest opportunity.

11 The third ground on which the compensation has been prayed is that, taking into consideration the lady accused there should have been a Lady Police Constable to effect the arrest or at the time of effecting arrest. Again, at the cost of repetition, no such complaint was made before the learned Magistrate. Further, the record has been produced along with the affidavit-in-reply to show that the Lady Police Officer was accompanying the squad, at the relevant time. Therefore, there is no substance in this point also.

12 The facts of the case in **Kisan Rupa Pawar** (supra) were different and this Court had come to the conclusion that the legal provisions have not been adhered to and, therefore, the compensation was granted. However, for the aforesaid reasons in respect of the facts of this case it will have to be observed that there were no such grounds which could have been taken into

consideration by this Court. So also, though the opportunity was available to the petitioners to raise those points before the learned Magistrate, they have not raised it. The order passed by the learned Magistrate holding that the grounds of arrest are justified have not been challenged within time, much less reasonable time and, therefore, there is no question of exercise of the constitutional powers of this Court as prayed. There is no merit in the present petition. It deserves to be dismissed. Accordingly, it is dismissed. Rule stands discharged.

(Rajesh S. Patil, J.)

(Smt. Vibha Kankanwadi, J.)

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