

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1150 OF 2022

Swapnilsing Kishorsing Pardeshi
Age : 26 years, Occu : Education,
R/o. Khandeshi Galli, Taloda,
Tq.Taloda, Dist. Nandurbar .. Petitioner

Versus

The State of Maharashtra .. Respondent

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Mr. Chaitanya C. Deshpande, Advocate for the Petitioner
Mrs. R.P. Gour, APP for the Respondent – State.

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CORAM : R. M. JOSHI, J.

RESERVED ON : 04-08-2023

PRONOUNCED ON : 08-08-2023

JUDGMENT :

. This petition is filed under Articles 226 and 227 of the Constitution of India taking exception to the judgment and order dated 27.06.2022 passed by the Additional Sessions Judge, Shahada in Criminal Revision Application No.12 of 2020 refusing challenge to the order dated 29.04.2020 issued by the Executive Magistrate, Taloda under Section 107 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'CrPC') whereby the petitioner was

called upon to furnish a bond of good behavior and peace for a period of six months.

2. It is the case of the petitioner that a complaint came to be lodged against him and his friend with allegations that they used to follow daughter of complainant and caused harassment to her with ulterior motive. Pursuant to the said complaint, Executive Magistrate issued show cause notice under Section 107 of the Code of Criminal Procedure, 1973 (CrPC) and called upon petitioner and his friend to furnish a bond for keeping good behaviour and peace by order dated 29.04.2020. Being aggrieved by the said order, the petitioner preferred revision under Section 397 of the CrPC before the Sessions Judge, Shahada. By impugned order, said Criminal Revision came to be dismissed.

3. Learned counsel for the petitioner states that without compliance of the provisions of Section 107, 111 and 116, impugned order came to be passed by the Executive Magistrate and on that count itself, the order deserves to be interfered with. It is submitted that before the issuance of show cause notice, the Executive

Magistrate is required to pass a preliminary order recording his satisfaction about likelihood of breach of peace ad public tranquility. Since in the present case no such preliminary order is passed by the Executive magistrate, the order in question cannot sustain. Learned counsel for the petitioner further states that though the period of bond is already over, it is just and necessary to set aside the order impugned as the same will cause impediment to the petitioner for securing government employment etc.

4. To support his submission, learned counsel for petitioner placed reliance on the judgment of the this Court in **Writ Petition No.548 of 2017, Rajesh Shamsundar Kejriwal vs. State of Maharashtra & another** decided on 11.08.2017.

5. Learned APP supported the impugned orders by submitting that record and proceeding of Chapter Case No.49 of 2020 clearly shows that on the basis of the complaint made by the father of the girl, prima facie opinion was formed by the Executive Magistrate about likelihood of causing of the breach of peace. It is submitted that the present petitioner has admitted to have received notice under

Section 111 of the CrPC and that at no point of time any grievance was made about non-receipt of notice for non application of mind by the Executive Magistrate. It is submitted that in fact the petitioner has admitted the contents of the said notice and once admission is recorded, there was no necessity of conducting any further enquiry.

6. By order dated 29.04.2020 the petitioner was called upon to furnish bond of Rs.20,000/- with one surety for maintaining peace and tranquility. The said bond was effective for the period of six months. Thus, after expiry of the period of bond, this petition has practically remained as academic.

7. Section 107 of the CrPC empowers the Executive Magistrate to seek a bond for good behaviour in the case he finds that there is likelihood of breach of public peace or tranquility. For the purpose of said execution of powers, the Executive Magistrate needs to satisfy himself about such likelihood of breach of peace. Perusal of the record shows that on the basis of complaint made by the father of the girl that she was being stopped and harassed, an order came to be passed which indicates the subjective satisfaction of the Executive

Magistrate on the basis of the said complaint. Pertinently when the show cause notice was issued to the petitioner under Section 111 of the CrPC, the petitioner in fact admitted the allegation against him. There is nothing on record to indicate that the said admission was not voluntary. Neither in the revision petition before learned Additional Sessions Judge nor in the present proceeding any such plea has been raised by the petitioner. This Court therefore has no hesitation to accept that the said admission by the petitioner was voluntary. An admission of the party is substantive evidence subject to fulfillment of the condition under Section 21 of the Evidence Act is the trite law. In such circumstances, the admission of the petitioner fortified the issuance of show cause notice by the Executive Magistrate. Further, in view of the said admission no further proof of allegation was required to be obtained or produced. In such case no further enquiry was expected to have been done by the concerned authority.

8. Learned counsel for the petitioner submits that though the period of bond is already over but it is just and necessary to set aside the order impugned as the same will cause impediment to the petitioner for securing government employment. The nature of

proceedings as contemplated under Section 107 of the CrPC indicates that it is not punitive, but preventive in nature. Even the Hon'ble Apex Court in the case of **Istakar vs. The State of Uttar Pradesh and anr, Criminal Appeal No.2034 of 2022** decided on 11.11.2022 in para no.11 of the said judgment has held so. Thus not only on merit but also on apprehension of petitioner, impugned orders do not deserve any interference.

9. In view of above, this Court finds no substance in the exception taken to the impugned orders and therefore, the petition is liable to be dismissed and is accordingly dismissed.

[R. M. JOSHI]
JUDGE

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