

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1350 OF 2022

Avinash s/o Haribhau Samudre
Age 35 years, Occu. Labourer,
R/o Milind Nagar, Before Police Station,
Ambajogai, Tq. Ambajogai,
District Beed

... PETITIONER

VERSUS

- 1) The State of Maharashtra
through Ambajogai City Police Station,
Ambajogai, Tq. Ambajogai, Dist. Beed
- 2) The Superintendent of Police,
Beed

... RESPONDENTS

.....
Mr. I.D. Maniyar, Advocate for petitioner
Mr. R.D. Sanap, A.P.P. for respondents
.....

**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

Date of reserving judgment : 13th July, 2023

Date of pronouncing judgment : 3rd November, 2023

JUDGMENT (PER R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith and taken up for final hearing at admission stage with the consent of learned counsel for the parties.

2. This Writ Petition, under Article 226 of the Constitution

of India, has been filed with the following two prayers :

- (A) By issuing appropriate writ, order or directions in the like nature the complaint filed by the petitioner on 16/02/2017 may kindly be considered and take action against the culprits as per law.
- (C) By issuing appropriate writ, order or directions in the like nature, respondents may kindly be directed to complete the investigation of complaint regarding the ill-treatment in the police custody within stipulated time and preferably within a period of one month.

3. The facts of the case in nutshell are as under:-

The petitioner was an accused in Crime No.118/2017, registered for the offences punishable under Sections 353, 352, 323, 504, 506 read with Section 34 of the Indian Penal Code. The crime was registered on 13/2/2017 with Ambajogai Police Station, District Beed. The petitioner was arrested and was produced before the Court of Judicial Magistrate, First Class for his remand to police custody.

4. On the application for the remand of the petitioner, following order was passed by the learned Judicial Magistrate, First

Class, Ambajogai :

Accused No.1 is now produced by police at about 12.10 P.M. Adv. present for accused. Accused has furnished written complaint against I.O. about ill-treatment. Verified the accused about it, no any external injury found on his person. As there is no progress in investigation, accused is sent in M.C. till 28/02/17. It is directed that medical examination of the accused shall be carried out and report be furnished in the Court earliest, along with his previous medical examination reports.

5. A copy of the written complaint made by the petitioner to the learned Magistrate has also been placed on record, wherein it has been alleged :-

प्रकरणात मी नामे अविनाश हरिभाऊ समुद्रे, राहणार मिलिंदनगर येथील रहिवासी असून छोटे मोटे कामे करून माझी व माझ्या कुटुंबाची उपजीविका भागवतो.

दि. १३/०२/२०१७ रोजी मी पोलीस स्टेशन समोर उभा असताना मला तेजस म्हावले पोलीस मारोती कांबळे यांनी मला बेकायदेशीर रित्या कोणतीही नोटीस न देता खोट्या प्रकरणात अटक करण्यात आली. त्यानंतर मला पोलिसांनी पोलीस स्टेशनमधील पोलीस होगले साहेबांच्या कॅबिन मध्ये डांबून बसविले. त्यानंतर काही वेळाने पोलीस निरीक्षक सुरेंद्र गाडे साहेबानी तुझ्या सोबत अजून तीन जण कोण होते म्हणून मला माझ्या डाव्या कानावर चापट मारली व माझ्या पाठीवर चापटा व बुक्या व पायावर लाथ

मारली. त्यानंतर साहेबांना मी खूप विनंत्या केल्या व काही वेळाने मला पुन्हा गाडे साहेबांनी मला म्हणाले के तुला मेडिकल करून सोडण्यात येईल. त्यानंतर मला लॉकपला टाकले व तसेच काही वेळानंतर संध्याकाळी १०.३० ते ११ च्या दरम्यान मला मोरे साहेब पोलीस म्हणाले की तुला डी.वाय.एस.पी. कार्यालयात बोलावले. तेव्हा मला लॉकपमधून माझ्या सोबत लॉकप गार्ड मुंडे साहेब पोलीस व मोरे साहेब यांनी मला पोलीस च्या गाडीमध्ये बसवून मला डी.वाय.एस.पी. साहेबांच्या हाताखालच्या दोन लोकांनी मला संपूर्ण नागड करून मला हातावर व माझ्या पृष्ठभागावर मारहाण केली. डी.वाय.एस.पी. साहेब म्हणाले की माझ्या समोर उपोषण करतोस का म्हणून शिवीगाळ आई बहिणीवर शिव्या दिल्या.

मी आरोपी असताना माझे मानव अधिकार असताना पोलिसांनी मला जाच जुलूम केला असून माझी त्यांच्या वर कायदेशीर फिर्याद आहे. तरी वरील लोकांविरुद्ध कालदेशीर कार्यवाही करावी ही नम्र विनंती.

6. The petitioner was medically examined. The medical examination report indicates two contusions on both of his thighs. The learned Magistrate forwarded the said complaint to the Principal District Judge, Beed, who in turn sent the same to the Superintendent of Police on 13/1/2021 for necessary action.

7. Clause 3 of Chapter I (Arrest and Investigation) of the Criminal Manual reads thus :

3. (1) If any allegation of ill-treatment is made by a prisoner, the Magistrate shall then and there examine the prisoner's body, if the prisoner consents, to see if there are any marks of injuries as alleged, and shall place on record the result of his examination. If the prisoner refuses to permit such examination, the refusal and the reason therefor shall be recorded. If the Magistrate finds that there is reason to suspect that the allegation is well founded, he shall at once record the complaint and cause the prisoner to be examined by a Medical Officer or registered Medical Practitioner as provided in Section 54 of the Code of Criminal Procedure, 1973 and shall make a report to the Sessions Judge. If he has not the power to take up the necessary inquiry himself, he should forward the prisoner with the record to the Judicial Magistrate having jurisdiction to investigate the case.

Attention of the Magistrates is invited to the provision of Section 54 of the Code of Criminal Procedure, 1973, which lays down that the Magistrate shall, at the request of the arrested person, direct the examination of the body of such arrested person by a Registered Medical Practitioner in case of his allegation before him that such examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body.

(2) (i) Medical Officers-in-charge of jails must carefully examine the body of every undertrial prisoner on the day of his arrival in jail or at least on the day following;

(ii)

(iii)

(iv) A Medical Officer or the Registered Medical Practitioner, as the case may be, to whom a person

in police custody is brought for examination, should examine the person of the prisoner, and even though no suspicious marks are found, should at once report to the Magistrate authorising police custody that he has done so.

(3) In all such cases, the Medical Officer or the Registered Medical Practitioner, as the case may be, should record the result of the examination.

(4) If any marks or symptoms at all indicative of recent violence or ill-treatment are found, the Medical Officer or the Registered Medical Practitioner, as the case may be, concerned, should immediately make a report to the appropriate Judicial Magistrate and to the Sessions Judge. This report should specify the nature of the injuries and their position, together with the opinion of the Medical Officer or the Registered Medical Practitioner, as the case may be, as to their causation, and should state whether the prisoner makes any allegations in regard to them against the police or others responsible for his arrest or custody, or state how else the prisoner explains them.

(5) If such allegations have been made, the Sessions Judge should arrange for an immediate Magisterial investigation into the complaint through such Judicial Magisterial as he may deem most convenient, unless he is satisfied by the Magistrate's report under Sub-paragraph (1) above, that adequate investigation is proceeding.

(6) The result of this investigation, so far it refutes or establishes the truth of the allegations made, must be communicated as soon as possible to the Court seized of the substantive case. If it considers it desirable or necessary, the Court may summon the Medical Officer or the Registered Medical Practitioner, as the case may be, to give evidence in the case.

8. In our view, the learned Judicial Magistrate, First Class has not followed clause 3 in letter and spirit. Moreover, the learned Sessions Judge ought not to have sent the complaint to the Superintendent of Police. We, therefore, allow the Writ Petition, directing the learned Magistrate concerned, before whom the petitioner had made complaint of ill-treatment, to have recourse to the provisions of the Criminal Manual and may decide to take cognizance of the offence and proceed in accordance with law. The learned Magistrate shall comply with the mandate of clause 3(1) of the Criminal Manual so far as regards making enquiry by himself and taking cognizance of the offence, if so made out. Rule made absolute in above terms.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-