



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

903 CRIMINAL WRIT PETITION NO. 539 OF 2024

1] Dattatraya Vitthalrao Gavhane

2] Venktesh Baburao Shinde

.. Petitioners

**Versus**

1] The District Magistrate i.e. Collector,  
Beed, Dist. Beed

2] The Superintendent of Police,  
Beed, Dist. Beed

3] The Police Inspector,  
Police Station Parali (City),  
Dist. Beed

4] The Police Inspector,  
Police Station, Sambhajinagar, Parali (V),  
Dist. Beed

.. Respondents

...  
Advocate for petitioners : Mr. Sudarshan J. Salunke  
PP for the respondent – State : Mr. A.B. Girase  
...

**CORAM : MANGESH S. PATIL &  
SHAILESH P. BRAHME, JJ.**

**DATE : 20 MARCH 2024**

**ORAL ORDER (MANGESH S. PATIL, J.) :**

We have heard both the sides finally.

2. By way of this writ petition, the petitioners are challenging the vires of the order passed by the District Magistrate, Beed, purportedly under section 144 of the Code of Criminal Procedure dated 16-03-2024 and a notice served upon them by the concerned Police

Inspector of Police Station, Parali City under section 149 of the Code of Criminal Procedure dated 17-03-2024.

3. The matter was mentioned yesterday morning. We had permitted the papers to be circulated and had heard the learned advocate for the petitioners as also the learned Public Prosecutor, extensively in view of the exigency. At the request of the learned Public Prosecutor, we posted the matter today high on board granting him an opportunity to file affidavits in reply.

4. Today, the learned Public Prosecutor tenders across the bar affidavit in reply of the Resident Deputy Collector, Beed on behalf of the respondent no. 1 and Additional Superintendent of Police, Beed on behalf of the respondent no. 2.

5. The petitioners by their application addressed to the concerned P.I. of Parali City Police Station (respondent no. 3) solicited the permission to convene a meeting scheduled to take place today evening at 6:00 pm in the premises of Agricultural Produce Market Committee, Parali Vaijanath, after obtaining no objection certificate dated 03-03-2024 from it. While the petitioners were waiting for the permission, the District Magistrate issued the order under section 144 on 16-03-2024 thereby prohibiting any congregation of any religion, caste or based on language, in the wake of the election program declared by the Election Commission of India of the year 2024 and the

Model Code of Conduct. It was a general direction and not individual centric. Thereafter, respondent no. 3 served the petitioners with notice under section 149 of the Code of Criminal Procedure which is also impugned herein dated 17-03-2024 which was based on the prohibitory order issued by the District Magistrate on 16-03-2024 and expressly directing them not to convene the meeting which was to be addressed by Shri Manoj Jarange Patil else action under the Model Code of Conduct of the Election Commission and for dis-obedience of the orders of the District Magistrate, would be initiated.

6. It appears that prompted by our query made yesterday specifically soliciting the reasons as to why the petitioners' application was kept pending and was not decided and still they were served with a notice under section 149, it appears that overnight an order has been passed by the police inspector concerned refusing permission to the petitioners. According to us, when the matter is being heard and a query was being put for not taking any decision on the petitioners' application, the respondent no. 3 should have allowed the status-quo to continue. Instead of allowing the matter to remain as it is, for the obvious reasons, a decision was taken overnight and a copy is now being tendered before us to demonstrate that the petitioners' application has been rejected. In our view, this in itself is sufficient to attribute *mala fides* on the part of the respondent no. 3 in taking the decision.

7. Pertinently, may be pursuant to the queries made by us yesterday, the District Magistrate, Beed has mentioned in the affidavit in reply filed on her behalf in paragraph no. 9, the impugned order dated 16-03-2024 is being withdrawn and a fresh order is being issued. Even learned Public Prosecutor makes an emphatic statement that but for pendency of this petition, no decision to revoke it or withdraw it has been taken. We are pointing out the instance to demonstrate a stark difference between the stand being taken by the respondent – District Magistrate and the one taken by the respondent no. 3 who did not wait and passed the order on the petitioners' application overnight. Precisely for this reason, we are even treating this petition as the one challenging that subsequent decision taken by respondent no. 3. For the very same reason, we have no hesitation to attribute that it is tainted and it liable to be quashed for the very reason.

8. It is important to note that without taking any decision on the petitioners' application till 16-03-2024, and it is only after the District Magistrate issued the order under section 144 CrPC, based on this order of the District Magistrate, the petitioners were served a notice under section 149 on 17-03-2024. One cannot comprehend as to why no decision was taken on the petitioners' application immediately and only after order under section 144 was issued, based on that notice under section 149 of the Code of Criminal Procedure was served.

9. Be that is it may.

10. The learned advocate for the petitioners would take us through the afore-mentioned history and would place reliance upon several decisions to buttress his submission that the impugned order under section 144 CrPC and even notice under section 149 of the Code of Criminal Procedure affects the fundamental rights of the petitioners guaranteed under Article 19(1)(g) of the Constitution of India.

11. Since the very order under section 144 of the Code of Criminal Procedure is now being revoked, in our considered view, one need not go into that aspect. What remains is the notice under section 149 and the subsequent decision rejecting the petitioners' application.

12. The learned Public Prosecutor refers to the affidavits in reply and endeavors to demonstrate as to how, in the wake of the elections, and experience of requiring several offences to be registered in the Beed district, pursuant to the agitation led by Shri Manoj Jarange, created law and order situation. He would demonstrate that as many as 116 offences had to be registered in different police stations. Even an incident had taken place near Kaij on 18-03-2024. Shri Manoj Jarange Patil makes an appeal to public not to allow the people's representative to enter into the villages and in view of the impending elections this could lead to law and order situation. The

learned Public Prosecutor also points out to us the Intelligence Bureau (IB) inputs and would demonstrate as to how many of these inputs turned out to be true in view of the subsequent events which led to registration of the afore-mentioned crimes. He would submit that even now, there are inputs from the IB as to the persons who were involved in these crimes being on bail, are likely to create law and order problem. It is the responsibility of the State to maintain it and to take appropriate steps including the prohibitory action.

13. Needless to state that there cannot be any justification for making a provocative speech which has the potential to disturb and create the law and order problem. However, a general perception is being entertained because of the individual who is leading an agitation for securing reservation to a particular caste / sect that every time there would be a law and order problem. It is not the version of the state that every agitation and the gathering to which Shri Manoj Jarange addresses has led to a law and order problem.

14. In anticipation of such a stand, even the learned advocate for the petitioners would point out that Shri Manoj Jarange had addressed a gathering at Chhatrapati Sambhajinagar on 19-03-2024 and places before us a paper cutting of Daily Lokmat.

15. In view of the above state-of-affairs, in our considered view, it would be appropriate that in the peculiar facts and circumstances discussed herein-above, the petitioners are permitted to convene the meeting, however, subject to certain restrictions.

16. The criminal writ petition is allowed.

17. Since the order under section 144 of the Code of Criminal Procedure is being revoked / recalled, nothing survives to that extent.

18. The impugned notice under section 149 of the Code of Criminal Procedure and the order rejecting the petitioners' application seeking permission, is quashed and set aside.

19. The respondent no. 3 shall grant the petitioners permission, by imposing necessary conditions as may be deemed fit and appropriate, by passing appropriate order immediately since the meeting is scheduled to take place today at 6:00 pm.

20. The petitioners shall ensure that in the meeting there would be no appeal to the citizenry to prevent entry of any people's representative in any village. They shall ensure that no provocative speech is delivered which would have a potential to lead to communal disharmony.

21. The order is dictated in open Court.
22. Parties to act on an authenticated copy of this order.

**[ SHAILESH P. BRAHME ]**  
**JUDGE**

**[ MANGESH S. PATIL ]**  
**JUDGE**

arp/