



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

CRIMINAL APPLICATION NO.1670 OF 2019

- 1) Vaibhav S/o Raosaheb Thorat,
Age-25 years, Occu:Education,
R/o-Plot No.3, CIDCO, N-5, Aurangabad,
- 2) Amol S/o Raosaheb Thorat,
Age-30 years, Occu:Service,
R/o-Plot No.3, CIDCO, N-5, Aurangabad.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through the Police Station Officer,
Gangapur Police Station,
Dist-Aurangabad,
- 2) Anand S/o Praju Pankade,
Age-24 years, Occu:Private Service,
R/o-Ambewadi, Tq-Gangapur,
Dist-Aurangabad

...RESPONDENTS

...
Mr. V.B. Jagtap Advocate for Applicants.
Mr. A.M. Phule, A.P.P. for Respondent No.1.
Mr. A.D.Muley Advocate for Respondent No.2.
...

WITH

CRIMINAL WRIT PETITION NO.787 OF 2019

- 1) Vaibhav S/o Raosaheb Thorat,
Age-25 years, Occu:Education,
R/o-Plot No.3, CIDCO, N-5, Aurangabad,

- 2) Amol S/o Raosaheb Thorat,
Age-30 years, Occu:Service,
R/o-Plot No.3, CIDCO, N-5, Aurangabad.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through the Secretary to the
Government of Maharashtra in
Home Department, Mantralaya,
Fort, Mumbai-32,
- 2) The Superintendent of Police,
Aurangabad,
- 3) Mr. Hashmi Naeem Pasha,
Age-50 years, Occu:Service as
Police Inspector, Gangapur
Police Station, Dist-Aurangabad,
- 4) Mr. Chate,
Age-35 years, Occu:Service as
Police Sub-Inspector, Gangapur
Police Station, Dist-Aurangabad,
- 5) Mr. D.A. Shinde,
Age-35 years, Occu:Service as
Police Naik, Gangapur Police
Station, Dist-Aurangabad
- 6) Mr. Samadhan Dubile,
Age-40 years, Occu:Service as
Police Constable, Gangapur
Police Station, Dist-Aurangabad,
- 7) Mr. Balveer Bahure,
Age-30 years, Occu:Service as
Police Constable, Gangapur
Police Station, Dist-Aurangabad,
- 8) Mr. Harish Sonwane,
Age-40 years, Occu:Service as
Police Constable, Gangapur
Police Station, Dist-Aurangabad

...RESPONDENTS

...
Mr. V.B. Jagtap Advocate for Applicants.
Mr. A.M. Phule, A.P.P. for Respondent Nos. 1, 2, 4, 6 to 8.
Mr. N.E. Deshmukh Advocate for Respondent No.3.
Mr. S.B. Rajebhosale Advocate for Respondent No.5.
...

**CORAM: SMT. VIBHA KANKANWADI AND
R.W. JOSHI, JJ.**

DATE OF RESERVING ORDER : 10th DECEMBER 2024

DATE OF PRONOUNCING ORDER : 20th DECEMBER 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Criminal Application No.1670 of 2019 has been filed under Section 482 of the Code of Criminal Procedure, initially for quashing the First Information Report (for short "the FIR") vide Crime No. 322 of 2018 registered with Gangapur Police Station, District-Aurangabad on 17th October 2018 and by way of amendment, for quashing the proceedings in R.C.C. No. 261 of 2018 pending before the learned Judicial Magistrate First Class, Gangapur, District-Aurangabad for the offence punishable under Sections 324, 143, 148, 147, 149, 323, 504, 506 of the Indian Penal Code. Whereas, Criminal Writ Petition No. 787 of 2019 is filed under Article 226 of the Constitution of India for directing the respondents to pay compensation of Rs.10,00,000/- for

illegally detaining the petitioners for more than 23 hours. Since the facts are common and the applicants / petitioners are same, these two matters are proposed to be disposed of by this common order.

2. The facts leading to the proceedings are that one Anand Praju Pankade, lodged FIR on 17th October 2018 with Gangapur Police Station, contending that he is resident of Ambewadi, Taluka-Gangpur, District-Aurangabad. However, his workplace is at Newasa Phata, District-Ahmednagar. He goes up and down from his house to the workplace daily. Applicant No.1 has his agricultural land adjacent to the land of the informant. They are cousin brothers, however, there is dispute since last two years prior to the FIR on account of agricultural land. The informant states that he was proceeding on motorcycle around 7.00 a.m. on 17th October 2018 and was near the land belonging to one Feroj Patel. At that time both the applicants / petitioners came suddenly in front of the informant along with their three unknown friends. The informant went to persuade the applicants. At that time both the applicants assaulted him with iron rod. Applicant No.1 had assaulted him on his right cheek and applicant No.2 caused injury to his head. The other three unknown persons had assaulted the informant with PVC pipe on

his hands, legs, thighs, back etc. According to him, the quarrel was separated by one Anna Govind Pankade, Vijay Pankade, Babasaheb Pankade. Thereafter the assailants went on their motorcycle. Supplementary statement of the informant was recorded stating that he was not aware that applicant No.1 is serving in G.S.T. Office.

3. The injury certificate has been collected, which shows three injuries, stated to be simple. Statements of witnesses are also there, especially, Anna Pankade, Babasaheb Pankade, Raosaheb Pankade and Govind Pankade. They all have stated that they have witnessed the present applicants and three unknown persons assaulting the informant.

4. Heard learned Advocate appearing for the applicants / petitioners, learned APP appearing for the State and learned Advocates appearing for the respective respondents.

5. As regards the Criminal Application for quashment of the proceedings is concerned, learned Advocate for the applicants mainly submits the plea of alibi as defence and that the statements of the interested witnesses and false implication.

6. The plea of alibi can be proved by an accused either by leading specific evidence regarding the presence at a different place or in certain circumstances, he can also rely on the cross-examination of the prosecution witnesses also. But certainly, it would be a point to be considered at the time of trial and cannot be considered under an application under Section 482 of the Code of Criminal Procedure. Unless there would have been an admitted document or a document issued by the Government Office, the plea of alibi cannot be taken cognizance of. Here, *prima facie*, there is evidence against both the applicants showing their involvement in the offence and therefore, Criminal Application No.1670 of 2019 deserves to be dismissed.

7. As regards Writ Petition is concerned, as aforesaid, it is filed for compensation for illegal detention. Learned Advocate appearing for the petitioners points out the remand report, bail documents, arrest panchnama as the documents which show that the arrest was not even approved by the learned Magistrate before whom the petitioners were produced. He submits that all the Sections under which the petitioners were arrested wereailable and the learned Magistrate has also made a mention in the order dated 25th October 2018, still from the time of arrest i.e. from 5.20 p.m. of 24th October 2018 till 4.30 p.m. of 25th

October 2018 i.e. for more than 23 hours the petitioners have been illegally detained. The arrest of the petitioners is also against the decision in *Arnesh Kumar vs State of Bihar and another, (2014) 8 SCC 273*. No grounds of arrest were placed before the learned Magistrate and therefore, the fundamental rights of the petitioners have been violated. They are required to be compensated in terms of money.

8. It is to be noted that affidavit-in-reply has been filed by respondent No.5, Police Naik, Dnyaneshwar Ashok Shinde. According to him, after the offence was lodged, he was searching the accused persons for the purpose of inquiry and they could not be found in the vicinity. Entry in the Station Diary was taken to that effect for three days. He says that he got the information on the basis of mobile tower location that the location of the accused is at G.S.T. Office, Aurangabad. It was got confirmed that accused Amol is working in the G.S.T. Office, Aurangabad. According to him, he went to the G.S.T. Office, Aurangabad. Then accused Amol called his brother Vaibhav and the accused persons had threatened and hurled abuses to respondent No.5 in the G.S.T. Office. According to him, officer Hemant Gange from G.S.T. Office came at the said place and then respondent No.5 disclosed his identity and the fact that the crime is registered

against the accused persons. Thereafter both the accused persons were taken to Vedant Nagar Police Station. According to him, he had tried to serve notices to the accused under Section 41-A(1) of the Code of Criminal Procedure, however, both the petitioners declined to take the notice. They had tried to pressurize the deponent and therefore, the deponent thought it fit to take them to Gangapur Police Station where the offence was registered and therefore, ultimately after going to Gangapur Police Station, he has arrested them at 00.50 hours on 25th October 2018. All the guidelines in the case of *D.K. Basu, Ashok K. Johari vs. State of West Bengal, State of U.P.*, (1997 (1) SCC 416) and *Arnesh Kumar vs State of Bihar and another* (supra), have been followed. The learned Judicial Magistrate First Class had rejected the prayer for police custody and released the accused on bail. He denies that there was any illegal detention.

9. Rejoinder has been filed by petitioner No.1 Vaibhav, to the affidavit-in-reply by respondent No.5. He has denied all the contentions in the affidavit-in-reply.

10. Again we would like to say that the learned Advocate for the petitioners, learned APP, and learned Advocates representing

respective respondents have made submissions in respect of the Writ Petition supporting their respective contentions.

11. We had found out from the order below remand report passed by the learned Judicial Magistrate First Class on 25th October 2018 that though the accused persons have not raised any complaint of ill-treatment at the hands of the police, however, after hearing the learned Advocate for the accused and perusal of the remand report showing that arrest is in bailable offence, the arrest is not as per the guidelines of ***Arnesh Kumar vs State of Bihar and another, (supra)*** and therefore, the accused persons were taken in magisterial custody and show cause notice was issued calling upon the explanation in view of ***Arnesh Kumar vs State of Bihar and another, (supra)***, as to why action should not be taken against the investigating officer. No document was produced before this Court and even the affidavit-in-reply by respondent No.5 was found to be silent as to whether he had responded to the notice or not, we had directed the Registrar (Judicial) to get a report from the concerned Magistrate, as to which steps were taken against respondent No.5. In fact, this Court had not directed the learned Magistrate to take any action in pursuance to the said order dated 25th October 2018. However, it appears that a newly appointed

Judicial Officer in his first posting, got confused and as no document was forthcoming, he had issued fresh show cause notice on 3rd December 2024, which appears to have been responded by respondent No.5. Report was called from the learned Judicial Magistrate First Class, just to avoid duplication of the action, as on 25th October 2018 the concerned Magistrate had already come to the conclusion that the guidelines in ***Arnesh Kumar vs State of Bihar and another, (supra)*** have been followed. It would have been suffice to report by the present learned Magistrate that no show cause notice was issued, though order was passed by his predecessor. We understand the mental condition or the confusion with the newly appointed Judicial Magistrate.

12. Thus, what we are getting is that though there was a positive finding by the learned Magistrate that the guidelines in ***Arnesh Kumar vs State of Bihar and another, (supra)*** have not been followed and then he had taken action of issuing show cause notice to the investigating officer, he had not taken the said action to the logical end. The directions / guidelines of the Hon'ble Supreme Court or this Court should not be taken lightly. When a conclusion has been arrived at that there is violation of such guidelines, especially in this case it was violation of the

guidelines in the decision of ***Arnesh Kumar vs State of Bihar and another, (supra)*** which deals with the fundamental right of liberty, then the learned Judicial Magistrate First Class, Chief Judicial Magistrates and Additional Chief Judicial Magistrates cannot take the matter lightly. They will have to take the said action to its logical end.

13. Now, we have heard the learned Advocate who is representing respondent No.5. Even if we consider the remand report dated 25th October 2018, it can be seen that in the narration, respondent No.5, the investigating officer has given all those details which he has given in the present affidavit-in-reply. However, at the end, for the reasons of remand he has given other five grounds. As per Section 41 of the Code of Criminal Procedure in respect of those offences where the punishment is below seven years, grounds of arrest are required to be mentioned and as per the decision in ***Arnesh Kumar vs State of Bihar and another, (supra)***, those grounds of arrest will have to be considered by the learned Magistrate to arrive at a conclusion that whether the arrest was legal or not. In fact separate grounds of arrest were contemplated.

14. Now, in ***Prabir Purkayashtha vs. State (NCT of Delhi)***,

(2024) 8 Supreme Court Cases 254, the Hon'ble Supreme Court has explained the difference in the phrase, "reasons for arrest" and "grounds of arrest". We would like to rely on Para No.49, which runs thus:-

"49. It may be reiterated at the cost of repetition that there is a significant difference in the phrase 'reasons for arrest' and 'grounds of arrest'. The 'reasons for arrest' as indicated in the arrest memo are purely formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; to prevent the arrested person from making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Investigating Officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the 'grounds of arrest' would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the 'grounds of arrest' would invariably be personal to the accused and cannot be equated with the 'reasons of arrest' which are general in nature. "

15. The aforesaid decision has come on 15th May 2024 but the arrest in this case is of 2018. Therefore, that confusion was there. But in the order passed by the learned Magistrate, it was very clear that there was no attempt to give notice under Section 41-A of the Code of Criminal Procedure and the guidelines have not been followed. We observe that all the

offences were bailable. Even if both the accused would have been arrested, respondent No.5 had power to release the petitioners on bail. The correspondence/complaints those have been made by the petitioners show that they were given an impression that offence under Section 307 of the Indian Penal Code has been registered at Gangapur Police Station against them. There is no document produced by respondent No.5 showing that written information of arrest was given to the petitioners and/or to the near relatives.

16. Another fact to be noted is that the reply by respondent No.5 to the show cause notice, which is now given by the learned Judicial Magistrate First Class runs in 16 pages, which also contains wrong statements on the point of law. However, taking into consideration the rejoinder by the petitioners also, what can be transpired is that the petitioners are not disputing that they were taken to Vedant Nagar Police Station, Aurangabad first and especially in respect of petitioner No.2 – Amol, his superior - Hemant Gange was made aware about. We are also taking note of the fact that the petitioners are exaggerating the fact when now it is said that they were handcuffed and taken to the Magistrate. No such averments were there in their bail application and in fact their statement that they have no

complaint of ill-treatment to make against the police, was recorded by the learned Magistrate on 25th October 2018.

17. The fact, therefore, remains is that definitely all the offences against the petitioners were bailable and some of them cognizable, therefore, they could have been arrested. Of course, along with the arrest, grounds of arrest ought to have been given. There may not be a strict compliance, in a sense that reason for arrest was not separately stated but it is part of remand report and then the investigating officer was under obligation to state that the offences are bailable and the petitioners can furnish the bail. We are of the opinion that we cannot, on the basis of all these facts, come to the conclusion that the arrest is illegal. Definitely as regards the guidelines in *Arnesh Kumar vs State of Bihar and another*, (*supra*) are concerned, on which reference has been made by the learned Magistrate as they have not been followed is concerned, it appears that the concerned Magistrate had not considered the separate history that was given, giving 'grounds of arrest'. Even the Station Diary entries support the contention of respondent No.5. The petitioners had also made complaint applications to various Police authorities, superior in rank, in respect of the alleged illegal arrest. Inquiry was made by those superior

authorities and then they have come to the conclusion that there were reasons for respondent No.5 to arrest the petitioners. Now, though respondent No.5 had the power to release the petitioners on bail and could have released them on bail, would be a question of fact, but then the petitioners have not come with the case that they had shown their readiness for furnishing bail but it was refused. Case is not made out to exercise the constitutional powers of this Court to grant compensation. Hence the Petition deserves to be dismissed.

18. Taking into consideration the reasons above stated, both the matters, i.e. Criminal Application No.1670 of 2019 and Criminal Writ Petition No.787 of 2019, are dismissed.

[R.W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE