



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.287 OF 2023

(Mr. Pratik S/o Prakash Jaiswal Vs. State of Maharashtra thr. District Superintendent
of Police, Yavatmal and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. Sumedh Kadam, Advocate for Petitioner.
Mr. S. S. Doifode, APP for Respondent Nos.1 and 2/State.
Mr. R. R. Deo, Advocate for Respondent No.3.
Mr. H. V. Thakur, Advocate for Respondent No.4.

CORAM: SMT. VIBHA KANKANWADI AND
MRS. VRUSHALI V. JOSHI, JJ.

DATE: 1st AUGUST, 2024.

Heard Mr. Kadam, learned Advocate for the petitioner, Mr. Doifode, learned Additional Public Prosecutor for respondent nos.1 and 2/State, Mr. Deo, learned Advocate for respondent no.3 and Mr. Thakur, learned Advocate for respondent no.4.

2. The petition was filed for directions to respondent nos.1 and 2 to initiate investigation on the basis of complaints dated 18.01.2023 and 13.02.2023 lodged by the petitioner and also to direct them to seize CCTV footage from Attapur Outpost Police Station, Hyderabad, Telangana, since, the petitioner was apprehending that it will be destroyed. Further prayer was to direct respondent nos.1 and 2 to provide protection to the petitioner as well as his parents against the ill-treatment and harassment as well as

threats by the in-laws of the petitioner with the aid of respondent no.4 and its officials. The petitioner also prayed for initiating a CBI probe for investigation against the illegal and criminal acts committed by respondent no.4.

3. It is appears that during the pendency of the present petition offence came to be registered on 15.07.2023 vide Crime No.907/2023 for the offences punishable under Sections 363, 368, 341, 384, 143, 147, 149, 323, 294 and 506 of the Indian Penal Code with Awdhutwadi Police Station, District Yavatmal, as per the report lodged by the petitioner. On the last occasion i.e. on 12.07.2024 when the Investigating Officer was present before this Court it was stated by him that notice under Section 41 is issued to respondent no.4 and also to the other accused persons. It was then observed by this Court that since the petitioner who was abducted is an adult person, offence under Section 363 of the IPC will not get attracted. For offence under Section 363 of IPC, we will have to consider the provisions of Section 360 of IPC which prescribes kidnapping of only two types; one of a person who is below the age of 18 years i.e. minor and another is kidnapping out of India. Since, the petitioner is an adult person, therefore, we say that Section 363 IPC will not arise. We directed him on 12.07.2024 to consider which sections apply on the facts of the case.

4. It is now reported that the investigation is complete and the charge-sheet is ready. Investigating Officer

would file it within couple of days. In view of the said fact, we do not want to go into the matter which sections would then be applicable because it would be for the trial Court or the Magistrate Court to consider which sections are to be applied and which are transpiring even at the stage of taking cognizance of the matter.

5. In view of the registration of the crime prayer clause (a) of the petition stands redressed. As regards the CCTV footage from the house of petitioner is concerned, of which photographs have also been produced, under the directions of this Court on 12.07.2024, the petitioner has stated to have submitted the CCTV footage to the Investigating Officer. However, as regards the CCTV footage from Attapur Outpost Police Station, Hyderabad, Telangana is concerned in the reply dated 09.08.2023. It is stated that though contacted, Attapur Outpost Police Station, Hyderabad is not responding to the police. It is surprising, therefore, to note that police of another State is not responding to the request of the police from Maharashtra. The Investigating Officer is not remedy-less but since the said police station is situated in Hyderabad, Telangana, the Investigating Officer will have to reach to the local Magistrate for the order so that the CCTV footage can be collected. We grant the said liberty to the Investigating Officer, if he has not yet received the CCTV footage from the Attapur Outpost Police Station, Hyderabad.

6. As regards prayer clause (c) as stated above for

the protection of the petitioner as well as his parents, certainly the police are duty bound to provide protection if threat is eminent and of serious nature. The petitioner may approach the concerned police station and upon deposit of the requisite fees i.e. prescribed as per the rules may get the protection.

7. Learned Advocate for the petitioner has insisted for prayer clause (d) i.e. for initiate a CBI probe taking into consideration the police of another State is involved in the matter. The background for the case is that an offence came to be registered against the petitioner and his relatives vide Crime No.2011/2022 with Rajendra Nagar Police Station of Cyberabad in Telangana for the offence punishable under Sections 498-A and 506 of IPC and Sections 3 and 4 of the Dowry Prohibition Act. According to the petitioner, in view of the directions in *Arnesh Kumar v. State of Bihar and another (2014) 8 SCC 273*, the petitioner ought not to have been arrested or taken into custody. According to him, no notice was issued under Section 41 (A) of Cr.P.C. to him but with the influence of the in-laws, respondent no.4 had come all the way from Hyderabad in a four-wheeler and forcibly took him along with him to Hyderabad. There upon, he was made to sign the notice under Section 41 Cr.P.C. forcibly, and therefore, he has lodged the report after he came down to Yavatmal. The first and foremost fact which we will have to mention here is that the facts of the case are not such that this Court should monitor the investigation. The offence is then registered and now the charge-sheet is ready.

Unless the petitioner goes through the charge-sheet, he will not be able to say that it is not a complete charge-sheet or the investigation has not been done in a proper perspective. The sections under which the offence has been registered on the basis of written complaint filed by the petitioner would show that for all those offences the punishment that is prescribed is below seven years, and therefore, there also the decision in *Arnesh Kumar supra* would be applicable. Now, if another offence is transpiring which may be prescribing the punishment beyond seven years then the petitioner will have to demonstrate it to the concerned Magistrate. Another fact is that, it appears from the approach of the petitioner that any how he want that the accused persons against whom he had lodged the report should be arrested. This would be a revengeful act which is not contemplated. In each and every matter arrest is not the only solution, and therefore, we give liberty to the petitioner to approach the learned Magistrate after the charge-sheet is filed and then to make appropriate application. Certainly case is not made out for involving the Central Investigation Agency like CBI.

8. With these observations, the petition stands disposed of.

(MRS. VRUSHALI V. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)