



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

CRIMINAL WRIT PETITION NO. 121 OF 2024

1. Hamant Sikander Jham,
Aged about 37 years, Occ. Business,
R/o. 202, Orchid Bloom Apartment,
Sai Nagar, Sonegaon, Nagpur.
2. Mukesh Hansraj Jham,
Aged 54, Occ. Business,
R/o. 13, Rajabaksha, Medical Square,
Nagpur.

... PETITIONERS

// VERSUS //

1. State of Maharashtra through
the Superintendent of Prison,
Nagpur Central Jail, Nagpur.
2. Nitin Nemichand Jain,
Aged 50 years,
R/o. Flat No. II-202, Shantiniketan
Adani Township, Berdipar,
Taluka Tirora, District Gondia-441919.
3. Pramod Wasantrao Chouhan,
Aged 56 years,
R/o. Flat No. II-212, Shantiniketan
Adani Township, Berdipar,
Taluka Tirora, District Gondia-441919.
4. Shramal Namdeo Nandeshwar,
Aged 44 years,
R/o. Plot No. 41 N.I.R. Vaishali School
Masal Labout, Jaripatka, Nagpur.
5. Bipin Madhukar Yambal,
Aged 49 years,
R/o. Quarter No. II-172, Shantiniketan
Adani Township, Berdipar,
Taluka Tirora, District Gondia-441919.

6. Umesh Hariram Solanki,
Aged 47 years,
R/o. Plot No. 54, Shantiniketan
Adani Township, Berdipar,
Taluka Tirora, District Gondia-441919.
7. Niraj Keshav Rao,
Aged 43 years,
R/o. Shantiniketan Adani Township,
Berdipar, Taluka Tirora,
District Gondia-441919.
8. Hemant Sadashiv Bhujade,
Aged 52 years,
R/o. 4 & 5, Laxmiviar Complex No. 2,
Wardha Road, Nagpur.

... **RESPONDENTS**

Shri Amit D. Bhate, Advocate for petitioners.
Shri A. M. Kadukar, APP for respondent no. 1/State.

CORAM :- M. W. CHANDWANI, J.

DATED :- 23.02.2024

ORAL JUDGMENT :-

Heard.

2. The learned APP for the State has filed reply, which is taken on record.

3. **Rule.** Rule made returnable forthwith. Heard finally by the consent of the parties.

4. The petition challenges the common order dated 09.01.2024 passed by the learned Additional District Consumer Commission, Nagpur (for short, “the Commission”) in EA Nos. 17/63, 17/64, 17/65, 17/14, 17/15, 17/24 and 17/137, whereby the bail application of the petitioners have been rejected.

5. The facts which leads to filing of the present Writ Petition can be summerised as under:-

The petitioners were Directors of M/s. Jham Builders, who were arrested in MPID Case No. 8/2019, registered with Police Station Dhantoli vide Crime No. 181/2019. That apart, 201 complaints came to be filed against the petitioners before the Commission and those complaints came to be allowed by passing Awards against the petitioners. Since, the petitioners could not comply with the orders passed by the Commission, 201 complainants filed the execution proceedings before the Commission under Section 27 of the Consumer Protection Act, 1986 (for short, “the Old Act”) for non-compliance of the orders of the Commission, which prescribed punishment of imprisonment for a term from one month to three years. Since, the petitioners were in custody in Crime No. 181/2019 therefore, the Commission issued production warrant to the respondent no. 1- Superintendent of Nagpur Central Jail directing him to produce the

petitioners in all 201 execution proceedings. Since, the proceedings under Section 27 of the Old Act is a criminal proceeding, after production before the Commission, the petitioners were remanded to custody by the Commission in those 201 cases. Meanwhile, the petitioners were released on bail in MPID Case No. 8/2019 in Crime No. 181/2019. However, the petitioners were in remand custody in the execution proceedings, they applied for releasing them on bail. Except 7 execution proceedings mentioned above, in all other proceedings, the petitioners got bail from the Commission, whereas in one execution proceeding, the petitioner no. 1 is convicted under Section 27 of the Old Act by the Commission. However, in the 7 execution proceedings, the Commission rejected the bail application of the petitioners on the ground that execution applications, for non-compliance of the order passed in favour of the complainants, were filed long back and the complainants in those proceedings will have to run behind other Authorities despite of having decree in their favour and therefore, refused to grant bail to the petitioners. Feeling aggrieved with the said order, the present Writ Petition came to be filed.

6. It is contended on behalf of the learned counsel for the petitioners that pursuant to the notice issued by the Commission, the petitioners have been granted bail in all the matters except these 7

matters. Apart from this, it is contended that the applications under Section 27 of the Old Act for non-compliance of the order of the Commission are pending against the petitioners. The petitioners are behind the bar in these cases since October-2019 and the maximum punishment under Section 27 of the Old Act is three years. It is also contended that one of the petitioner is suffering from Liver Cirrhosis and cancer of gallbladder therefore, it is prayed that they be released on bail. It is further submitted that out of 201 complaints, in one case, the petitioner no. 1 is convicted and sentenced for three years.

7. *Per contra*, the learned APP for the State submits that since they were under the remand warrant issued by the Commission therefore, unless there is order of the bail by this Court, they cannot be released. He submitted that the petitioner no. 2 is in a good state of health and prayed that appropriate order may be passed.

8. Needless to mention that it is the order of punishment under Section 27 of the Old Act, which is appealable under Section 27 of the Old Act before the State Commission and not the order of rejection of bail, pending the proceeding under Section 27 of the Old Act. Since, no appeal is provided against the rejection of bail by the Commission certainly, the writ jurisdiction can be invoked.

9. Notably, the petitioners have been released on bail in Crime No. 181/2019 registered under the MPID Act but, they are languishing in jail in these execution proceedings since long. Rather, they are inside the jail for more than three years. Though, the Commission granted bail in other matters, rejected the bail only in seven proceedings without assigning any special reasons as to why these execution proceedings are different than other proceedings in which bail was granted. The Commission while rejecting the bail application has not considered that the maximum punishment prescribed for the default of the order of the Commission is imprisonment for a term of three years. Hence, the approach of the Commission, in keeping the petitioners behind the bar at pre-trial stage and adjourning the matter for long is quite disturbing. Therefore, I am inclined to entertain the Writ Petition and set aside the impugned order. Hence, I proceed to pass the following order:-

- i) The Writ Petition is allowed.
- ii) The common order dated 09.01.2024 passed by the learned Additional District Consumer Commission, Nagpur in EA Nos. 17/63, 17/64, 17/65, 17/14, 17/15, 17/24 and 17/137 is quashed and set aside.

iii) The petitioners be released on bail on furnishing cash surety of ₹15,000/- (Rs. Fifteen Thousand) each in each of the above execution proceedings pending before the learned Additional District Consumer Commission, Nagpur.

iv) Rule is made absolute in the above terms.

(M. W. CHANDWANI, J.)

RR Jaiswal