



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

8 CRIMINAL WRIT PETITION NO. 288 OF 2025

Dhammadip S/o. Janardhan Mogale,
Age : 33 Years, Occu. : Education,
R/o. Arogya Colony, Parbhani,
Tq. & Dist. Parbhani.

.... Petitioner

VERSUS

1. The State of Maharashtra,
Through the Secretary of the
Home Department,
Mantralaya, Mumbai.
2. The Director General of Police,
The State of Maharashtra,
Mumbai, Maharashtra.
3. The Special Inspector of General,
Nanded Region, Nanded.
4. The Superintendent of Police,
Parbhani.
5. The Dy. Superintendent of Police,
Parbhani.
6. The Police Inspector,
Police Station Nawa Mondha,
Parbhani.
7. The Police Inspector,
Police Station Nanalpeth,
Parbhani.
8. Medical Officer,
Civil Hospital,
Parbhani.

.... Respondents

....
Advocate for the Petitioner : Mr. Milind B. Sandanshiv
APP for Respondents-State : Mr. N.R. Dayama
....

**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

Dated : 17th March 2025

PER COURT :-

1. Heard learned Advocate for the petitioner. The present petition has been filed for following reliefs :

“[B] This Hon’ble Court may kindly by issuing an appropriate writ or direction, direct respondent No.1 to appoint an I.P.S. Officer (out of the Nanded Region of Inspector General) to register the offence and investigate the crime against the Police persons, as per the written complaint filed by the petitioner on dated 19/12/2024 as per the provisions of the B.N.S. Act as well as the Prevention of Atrocity Act against the S.C. and S.T. and Police persons who are illegally beaten and kept in lockup at the police station.

[C] This Hon’ble Court may kindly by issuing an appropriate writ or direction, directed to the investigation officer in respect of brutally beating the petitioner and illegally being kept in police custody at Nawa Mondha Police Station, Parbhani. Please direct to call the record in respect of arrest and other things which are mandatory

under the provisions of B.N.S.S., B.N.S, Maharashtra Police Act, and Bombay Police Manual, especially in respect of investigation and arrest.

[D] This Hon'ble Court may kindly investigate the above crime based on a written complaint dated 19/12/2024 given by the petitioner under the observation of this Hon'ble Court.

[E] This Hon'ble Court may kindly by issuing an appropriate writ or direction, direct the investigation officer please call C.C.T.V. footages of the Superintendent of Police office as well as Nava Mondha Police Station of Parbhani from dated 11/12/2024 to 25/12/2024.

[F] This Hon'ble Court may kindly by issuing an appropriate writ or direction, direct the Medical Officer of Civil Hospital Parbhani please to call on the medical treatment paper in respect of the petitioner.”

2. Taking into consideration the chronology of the prayers, it appears that the prayer clause 'B' is the first prayer which the petitioner is insisting and the subsequent prayer clauses 'C' to 'F' are the subsequent prayers upon the registration of the offence as prayed by the petitioner.

3. The petitioner's contention is that he was unnecessarily involved in Crime No.0468 of 2024, registered with Kotwali Police

Station, Parbhani, for the offences under Section 135 of the Maharashtra Police Act, 1951 and Sections 126(2), 189(2) of the Bharatiya Nyaya Sanhita, 2023. In spite of incident that has been allegedly taken place on 11.12.2024, the police have made atrocities against him. He was unnecessarily taken him custody. He was brutally beaten and since he belongs to the member of scheduled caste, remarks were made and abuses were given in the name of caste. He was admitted to the hospital and he has taken treatment from 11.12.2024 and discharged on 13.12.2024 from Civil Hospital, Parbhani.

4. The petitioner's further contention is that, thereafter, on 19.12.2024, he had given a written complaint to Police Inspector, New Mondha Police Station, Parbhani and on the same date, he had also given a separate complaint to District Superintendent of Police, Parbhani, when his complaint was not taken. Since the atrocities have been done, the petitioner says that directions are required to be given for the registration of offence. It is then also submitted that when he was arrested, the reasons for arrest were not given and there is violation of his fundamental rights. The CCTV footage has not been collected which would have shown he was absolutely not involved in the said crime in which he has been shown to be arrested.

5. As regards the directions to be issued for registration of the offence either by taking recourse to Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”), we are considering the decision in *Sakiri Vasu Vs. State of U.P. and Others, 2008 (2) SCC 409*. Then, we are also considering the decision in *Sudhir Bhaskar Tambe Vs. Hemant Yashwant Dhage, 2016 (6) SCC 277*.

6. In **Sakiri Vasu** (Supra), the Hon’ble Supreme Court has held that “if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) of Cr.P.C. If such an application under Section 156(3) of Cr.P.C. is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter.”

7. In **Sudhir Tambe** (Supra), it has been further observed that “we have said this in Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156 of Cr.P.C. and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.

8. These two decisions are later on reiterated in ***M. Subramaniam Vs. S. Janaki, 2020 (16) SCC 728***. Therefore, taking into consideration this settled position of law, we are of the opinion that this Court cannot direct registration of the first information report in the matter. However, as the course was adopted in **M. Subramaniam** (Supra) that liberty was granted to the petitioner to approach the Magistrate and then the Magistrate to take his own

decision, we keep the same liberty open to the petitioner herein to approach the concerned Magistrate under Section 175(3) of BNSS (old Section 156(3) of Cr.P.C.) We clarify that we not express any opinion as regards the merit of the case. But if the petitioner approaches the Magistrate as aforesaid, then the Magistrate to decide the said application as per the provision of law. With these observations, we dispose of the writ petition at the threshold.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asd