



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 731 OF 2021

Amol S/o Bharat Khule,
Age: 36 years, Occ. : Driver,
R/o. Newasa BK Tal. Newasa,
Dist. Ahmednagar.

... PETITIONER

...VERSUS...

1. The State of Maharashtra,
Through Superintendent of Police,
Osmanabad.
2. The In-charge Investigation Officer,
Police Station Ambi Tal. Paranda,
Dist. Osmanabad.
3. Anilkumar Ramchandra Helkar
Age: 42 years, Occ. : Service as the Tahsildar,
Tahsil Office, Paranda,
Dist. Osmanabad.

... RESPONDENTS

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- Mr. Vikram S. Undre, Advocate for Petitioner
 - Mr. V. D. Sapkal, Senior Advocate i/b. Mr. Sandip. R. Sapkal,
Advocate for Respondent no. 3
 - Mr. V. K. Kotecha, APP for Respondent nos. 1 and 2
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CORAM : NITIN B. SURYAWANSHI AND
VAISHALI PATIL – JADHAV, JJ.

RESERVED ON : OCTOBER 13, 2025

PRONOUNCED ON : NOVEMBER 20, 2025

JUDGMENT [Per Vaishali Patil – Jadhav, J.] :

. Rule. Rule made returnable forthwith, heard finally with
the consent of both parties.

2. This Criminal Writ Petition is filed under Article 226 of the Constitution of India and Section 482 of the Criminal Procedure Code, 1973, seeking directions against respondent nos. 2 and 3 to pay compensation of Rs. 5,00,000/- to the petitioner on the ground that the petitioner was illegally arrested and detained in custody by respondent no. 3, thereby, exceeding the powers vested with him and also violating the fundamental right i.e. 'Right to Life and Personal Liberty' guaranteed under Article 21 of the Constitution of India.

3. It is the case of the petitioner that, petitioner is owner of agricultural land adjacent to Bhairavnath Sugar Company Ltd. situated at Village Sonari, Tq. Paranda, Dist. Osmanabad. The polluted water discharged from the sugar factory drains into the agricultural land of the petitioner. Therefore, the petitioner had requested the administration of the sugar factory to stop the same, as it causes infertility of the land of the petitioner. The petitioner was making requests to stop the polluted water from being drained into his agricultural land, hence, two NCRs came to be registered against him. NCR Nos. 171/2020 and 87/2021 were registered against the petitioner under Sections 504, 506 and 507 of Indian Penal Code on 30.06.2020 and 24.05.2021 respectively. On the basis of these NCRs, the police officer of the Ambi Police Station submitted Chapter Report No. 49 of

2021 under Section 107 of Criminal Procedure Code before respondent no. 3 on 25.05.2021, requesting to pass an order to execute the bond of good behaviour for maximum period. The petitioner was produced before respondent no. 3 and he passed an order of sending the petitioner to Magisterial Custody from 25.05.2021 to 31.05.2021.

4. As there was holiday on 26.05.2021, the advocate for the petitioner, along with surety, namely, Ravindra Tanaji Khule, filed bail application before respondent no. 3 on 27.05.2021, praying grant of bail. However, respondent no. 3 rejected the said application on the ground that an order has already been passed by him on 25.05.2021. It is this action of the respondent, which is assailed in this petition.

5. Learned advocate for the petitioner argued that the procedure of remanding the accused to Magisterial Custody in connection with the Chapter Proceedings under Section 107 of Criminal Procedure Code is not contemplated under Chapter VIII of Criminal Procedure Code. He submitted that, the Executive Magistrate, if he considers that immediate measures are necessary for the prevention of breach of the peace or disturbance of the public tranquility, then he can direct the person against whom the order under Section 111 of the Criminal Procedure Code has been passed to execute a bond, with or

without surety for keeping the peace. It is also contended that respondent no. 3 has acted beyond the jurisdiction by exercising powers, which are not vested with him. It is further submitted that, the petitioner's right under Article 21 of the Constitution of India is violated by illegally detaining him for seven (07) days and hence, he claims compensation for his illegal detention. In support of his contention the petitioner has relied on the following case laws :

- I. *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*¹
- II. *Gopalanachari Vs. State of Kerala*²
- III. *Surendra Ramchandra Taori Vs. State of Maharashtra and Others*³
- IV. *Pravin Vijaykumar Taware and Others Vs. Special Executive Magistrate, Baramati and Another*⁴
- V. *Dinesh Vitthal Patil and Another Vs. State of Maharashtra and Others*⁵
- VI. *Rajesh S/o Surybhan Nayak Vs. State of Maharashtra and Ors.*⁶
- VII. *Dattatraya S/o Mahadu Tikkal Vs. The State of Maharashtra and Others*⁷
- VIII. *Mohd. Salam Mohd. Sakir Ansari Vs. L.S. Danekar and Another*⁸

1 AIR 1971 SC (1) 2486

2 AIR 1981 SC 674

3 2001 (4) Mh.L.J. 601

4 2009 (3) Mh.LJ (Cri.) 155

5 2012 (1) Mh.LJ 817

6 2006 (8) LJ SOFT 39

7 Criminal Writ Petition No. 964 of 2012

8 1999 Mh. L.J. (3) 864

IX. Jayvant Gabaji Tambe Vs. State of Maharashtra and Others⁹

6. Per Contra, learned senior counsel for respondent no. 3 has argued that, as per Section 3 of the Judges (Protection) Act, 1985, there is protection to the Judges, and therefore, no action or prosecution can be initiated against the Judges or quasi-judicial officers for their acts done in the official capacity. Learned senior counsel submitted that respondent no. 3, being a quasi-judicial officer, has conducted a detailed hearing of the matter and, after considering the evidence placed on record by the police and after hearing the petitioner, passed the reasoned order dated 25.05.2021. It is submitted that the petitioner was detained by following due procedure of law and there was no illegal detention as such. Hence, there is no question of paying any compensation to the petitioner. Learned senior counsel further submitted that, respondent no. 3 has acted within four corners of law and well within jurisdiction. He, being a quasi-judicial officer, cannot be compelled to pay compensation for the action taken by him while discharging his official duty. Merely because a wrong order is passed by the Court or a quasi-judicial authority that by itself cannot be a ground to claim compensation. Respondent No. 3, thus, claimed protection under Section 3 of the Judges (Protection) Act, 1985. Respondent No. 3 has also filed affidavit-in-reply stating the abovementioned arguments.

⁹ 2008 (6) AIR BOM R 682

In support of his contention, respondent no. 3 has relied upon the following case laws :

- A) *N.V. Shamsunder V. Savitabai S. Singhvi and Ors.*¹⁰
- B) *S.P. Goel V. Collector of Stamps, Delhi*¹¹
- C) *E.S. Sanjeeva Rao V. Central Bureau of Investigation (CBI) Mumbai and Others*¹²
- D) *Anowar Hussain V. Ajoy Kumar Mukherjee and Others*¹³

7. We have heard learned advocate for the petitioner, learned senior counsel for respondent no. 3, and learned APP for respondent nos. 1 and 2 at length. We have given anxious consideration to the facts and circumstances placed before us and have also perused the record.

8. The facts relating to the arrest and detention of the petitioner by the impugned order dated 25.05.2021, passed under Section 107 of Criminal Procedure Code are not in dispute. It is also not disputed that the bail application of the petitioner was rejected only on the ground that the order is already passed on 25.05.2021.

9. For considering the grievance of the petitioner, it is necessary to consider the relevant Sections of Chapter VIII of Criminal

Procedure Code. The relevant provisions are reproduced as follows:

¹⁰ 2007 (1) AIR Bom. R 116

¹¹ AIR 1996 SC 839

¹² 2012 CRI. L.J. 4053

¹³ AIR 1965 SC 1651

Section 107 (1): When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond [with or without sureties], for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

Section 111: Order to be made. – When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

Section 116 (3): After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reason to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or

maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:

Provided that-

(a) No person against whom proceedings are not being taken over under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behaviour;

(b) The conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under Section 111.

Section 117: Order to give security – If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly :

Provided that –

(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 111;

(b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(c) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

10. From the sections quoted above, the procedure while deciding the chapter cases can be summarized as follows :

- a. There should be information against the person that he is likely to commit breach of peace or he is likely to disturb the public tranquility or is likely to do any wrongful act, which may occasion breach of peace or disturbance of public tranquility;
- b. There should be material sufficient enough before Executive Magistrate for forming opinion that there is aforesaid probability;
- c. There should be subjective satisfaction of the Executive Magistrate that such a ground exists and that an opinion needs to be formed on the basis of material;
- d. Section 107 makes it incumbent on the part of the Executive Magistrate to issue show cause notice, as to why a person should not be ordered to execute a bond with or without sureties for keeping the peace for such a period not exceeding one year.
- e. Sections 106 and 107 empower the Magistrate only to obtain bond with or without surety/security for keeping

peace, from the concerned person to prevent him from committing offence.

f. When Magistrate takes action under section 111 for offences under Section 107 of the Criminal Procedure Code, he has no power to send person to Magisterial Custody. He has power to issue show-cause notice only and, if necessary, initiate an enquiry.

g. When a Magistrate while acting under Sections 107, 108, 109 or 110 of Criminal Procedure Code deems it necessary to require any person to show cause under such sections then he shall make an order in writing, based upon the substance of the information received. The order should mention the amount of the bond to be executed, the term for which it is to be enforced or class of sureties, if any required.

h. In a proceeding initiated under Section 107 of the Criminal Procedure Code, no surety/security or personal bond is required to be furnished under an interim order under Section 116 (3) (a) and hence, a person cannot be detained for non-execution of interim bond.

i. If any one commits breach of any order under Section 107 of the Criminal Procedure Code, he will have to be prosecuted before a Judicial Magistrate to receive punishment passed by Executive Magistrate, directing he execution of bond.

11. On a plain reading of the above Sections it is clear that Executive Magistrate has no authority/power to remand a person to Judicial or Magisterial Custody in a proceeding under Section 107 of Criminal Procedure Code.

The objective of chapter cases is not punitive in nature; rather, the aim of chapter cases is to prevent a person from indulging in any activity which disturbs the peace and tranquility based upon antecedent and past history.

12. While remanding the petitioner in judicial custody, respondent no. 3 has passed following order;

“प्रकरणात आय.ओ. एस. बी. वाघुले हजर व जाब देणार अमोल भारत खुळे हजर. सदर प्रकरणात कागदपत्रे, जबाब, एनसी यांचे अवलोकन केले असता. भविष्यात सामा. जिक तेढ पसरवून सार्वजनिक शांततेचा भंग होण्याची शक्यता नाकारता येत नाही. सबब सदर अपराधी अमोल भारत खुळे यास ३१.५.२१ पर्यंत न्यायालयीन कोठडी देण्याचे आदेशित करण्यात येते.”

13. From the above order, it is apparent that the Executive Magistrate has acted beyond the vested jurisdiction, which has resulted in violation of Article 21 of the Constitution of India whereby the personal liberty of petitioner was taken away by detaining him in magisterial custody for seven days without following the due procedure of law and by acting beyond the jurisdiction conferred by law.

14. While passing the impugned order, the respondent no. 3 has not issued any show cause notice to the petitioner neither was he asked to execute the bond with or without sureties for keeping the peace. Though in the order respondent no. 3 says that he had apprehension that the petitioner may cause breach of peace or disturbance of public tranquility there is no discussion as to on what basis, he has reached the said conclusion.

Respondent No. 3 has further committed illegality by rejecting the application filed by the petitioner on 27.05.2025 for bail, on the ground that he has already passed an order of remanding the petitioner in MCR on 25.05.2021.

15. The order passed by respondent no. 3 is wholly without jurisdiction and he has acted in totally illegal manner in remanding the petitioner to the Magisterial Custody. This Court has issued directions to the State in the proceeding under Sections 107 and 108 of Criminal Procedure Code in **Rajesh Suryabhan Nayak Vs. The State of Maharashtra**¹⁴, as under:

“11. This, we are required to highlight as a fact that in a proceedings initiated under Section 107 of the Code, it is common practice on the part of the Executive Magistrate to insist for surety bond by passing interim order under Section 116 (3) Cr. P.C. The court has taken judicial notice of this that inspite of a clear cut provisions in Clause (a) of the proviso to

¹⁴ 2006 (5) Mh.L.J. 243
komal kamble

*Sub-section 3 of Section 116 of the Code of Criminal Procedure, in a proceeding initiated under Section 107 of the Code and the form no. 12 (Scheduled II) which is prescribed for executing bond under section 107 of the Code, **persons are detained in judicial custody for their failure to furnish interim surety in a proceedings initiated under Section 107 of Chapter VIII of the Code in exercise of jurisdiction not vested upon them in law.** {See State of Maharashtra and Anr. V. Mangali Dewaiyya Puppalla, Mh.L., 483, Mrs. Pramila Navin Shaha V. State of Maharashtra and Ors. Fact that in a proceedings initiated under Section 107 of the Code no surety/security or personal bond is required to be furnished under an interim order under section 116 (3) Criminal Procedure Code,, henceforth if it comes to the notice of this court that a person against whom proceedings are initiated under section 107 of the Code is detained in judicial custody for failure on his part to furnish interim surety/security Bond or personal Bond pursuant to an order passed under Section 116 (3) of Criminal Procedure Code. **The State shall be liable to pay compensation to such person for violation of his fundamental right enshrined under Article 21 of the Constitution of India and the aggrieved person may also take recourse to other remedies available to him under the general law viz. to prosecute the said magistrate for wrongful confinement and appropriate compensation for wrongful detention."***

In the light of the aforestated discussion and the above ratio, the detention of the petitioner is illegal and it is in violation of petitioner's fundamental right guaranteed under Article 21 of the Constitution of India. The petitioner is, therefore, entitled for compensation.

15. Respondent No. 3 has strongly relied on Section 3 of Judges (Protection) Act, 1985 contending that his action of sending the petitioner in magisterial custody was taken while exercising powers as a quasi-judicial authority and during exercise of his duties without any ill intention hence his actions are protected under Section 3 of the Act. For dealing with the arguments of respondent no. 3, it is necessary to consider as to whether the functions discharged by respondent no. 3 in chapter proceedings as Executive Magistrate are executive or quasi-judicial. It would be apposite to extract Section 3 of the Judges (Protection) Act for better appreciation of the contentions raised by the respondent no. 3. Section 3 reads thus:

“3. Additional protection to Judges - (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function. (2) Nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge.

The case laws relied by respondent are not relevant for deciding the issue in hand as those case laws are on different facts, circumstances, acts and powers.

16. Hon'ble Supreme Court in **Gulam Abbas Vs. State of Uttar Pradesh**¹⁵ has succinctly considered this issue and held as follows:

"25. Turning to the 1973 Code itself the scheme of separating judicial Magistrates from executive Magistrates with allocation of judicial functions to the former and the executive or administrative functions to the latter, as we shall presently indicate, has been implemented in the Code to a great extent. Section 6 provides that there shall be in every State four classes of Criminal Courts, namely, (1) Courts of Session, (ii) Judicial Magistrates of the First Class and, in any Metropolitan area, Metropolitan Magistrates; (iii) Judicial Magistrates of the Second Class; and (iv) Executive Magistrates; Sections 8 to 19 provide inter alia for declaration of metropolitan area, establishment of Courts of Session, Courts of Judicial Magistrates, Courts of Metropolitan Magistrates and appointments of Sessions Judges, Additional Sessions Judges, Assistant Sessions Judges, Chief Judicial Magistrates, Chief Metropolitan Magistrates and Metropolitan Magistrates together with inter se subordination, but all appointments being required to be made by the High Court, while Sections 20, 21, 22 and 23 deal with appointment of District Magistrates, Additional District Magistrates, Executive Magistrates, Sub-Divisional Magistrates and Special Executive Magistrates and their respective jurisdictions in every district and metropolitan area together with inter se subordination, but appointments being made by the State Government, Chapter III comprising Sections 26 to 35 clearly shows that Executive Magistrates are totally excluded from conferment of powers to punish, which are conferred on Judicial Magistrates; this shows that if any one were to commit a breach of any order passed by an Executive Magistrate in exercise of his administrative or executive function he will have to be challenged or prosecuted before a Judicial Magistrate to receive punishment on conviction."

15 1982 (1) SCC 71
komal kamble

In the very paragraph the Supreme Court has further observed that,

“Further, if certain sections of the present Code are compared with the equivalent sections in the Old Code it will appear clear that a separation between judicial functions and executive or administrative functions has been achieved by assigning substantially the former to the Judicial Magistrates and the latter to the Executive Magistrates. For example, the power under Section 106 to release a person on conviction of certain types of offences by obtaining from him security by way of execution of bond for keeping peace and good behaviour for a period not exceeding three years-a judicial function is now exclusively entrusted to a Judicial Magistrate whereas under Section 106 of the old Code such power could be exercised by a Presidency Magistrate, a District Magistrate or Sub-Divisional Magistrate, but the power to direct the execution of a similar bond by way of security for keeping peace in other cases where such a person is likely to commit breach of peace or disturb the public tranquility-an executive function of police to maintain law and order and public peace which was conferred on a Presidency Magistrate, District Magistrate, etc. under the old Section 107 is now assigned exclusively to the Executive Magistrate under the present Section 107;”

It is also observed in the very paragraph that,

“But the fact that the parties and particularly the aggrieved party are heard before such an order is made merely ensures fair play and observance of audi alteram partem rule which are regarded as essential in the performance of any executive or administrative function and the further fact that a revision lies against the order of the executive magistrate

either to the Sessions Court or to the High Court removes the vice of arbitrariness, if any, pertaining to the section.”

The Supreme Court has discussed in detail the scheme of separation of Executive and Judicial functions laid down in new Criminal Procedure Code, and held that the power of Executive Magistrate to direct the execution of a bond under Section 107 is an executive function. If anyone commits breach of any order passed under Section 117 by Executive Magistrate by not executing the bond then he will have to be prosecuted before a Judicial Magistrate to receive punishment.

In the light of aforesaid ratio it is clear that respondent no. 3 was discharging the executive function while conducting the chapter proceedings against the petitioner under Section 107 of the Criminal Procedure Code. Therefore, he is not entitled to claim protection under Section 3 of the Judges (Protection) Act. We, therefore find no merit in the submission of the learned senior counsel that respondent no. 3 is entitled for protection under Section 3 of the said Act.

17. It is now a settled position of law to grant compensation for illegal detention for violation of Article 21 of Constitution of India. For his illegal detention of seven days and for the violation of his right

under Article 21 of the Constitution of India, the petitioner is entitled for compensation in terms of the ratio in ***Rajesh Suryabhan Nayak (Supra)***.

18. In the result, we pass the following order :

ORDER

(i) The Writ Petition is **allowed** in following terms:

(a) The respondent no. 1, State of Maharashtra is directed to pay a sum of Rs. 1,00,000/- (Rupees one lakh only) to the petitioner for illegal detention.

(b) It is further directed that the amount shall be deposited in Registry within a period of four (04) weeks from the date of uploading of this order and the same be paid to the petitioner.

(c) The respondent no. 1 is entitled to recover the said amount of Rs. 1,00,000/- (Rupees one lakh only) from the respondent no. 3.

19. Rule is made absolute in above terms.

[VAISHALI PATIL – JADHAV, J.]

[NITIN B. SURYAWANSHI, J.]