



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.517 OF 2011

Hiraman Suka Bhil
Age: 46 years, Occu.:
R/o. Tandali,
Taluka Amalner, Dist. Jalgaon.

.. Petitioner

Versus

The State of Maharashtra,
Through P.S.O. Marwad, Police Station,
Taluka Amalner, Dist. Jalgaon.

.. Respondents

...

- Mr. Subodh P. Shah, Advocate for the petitioner.
- Mr. S. A. Gaikwad, APP for the respondent/State.

...

**CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.**

DATE : 20 SEPTEMBER 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.) :-

. Heard learned Advocate Mr. Subodh P. Shah for the petitioner and learned APP Mr. S. A. Gaikwad for respondent/State.

2. **Rule.** Rule made returnable forthwith. The petition is heard finally with the consent of the learned Advocates for the parties.

3. Present petition has been filed for directions to the learned Additional Sessions Judge, Amalner to release the petitioner with immediate effect, as the petitioner was arrayed as accused in Sessions Case No.22 of 2010 and it resulted in acquittal. The petitioner also seeks compensation of Rs.1,00,000/- for his alleged detention even after his acquittal in the said case by learned Additional Sessions Judge, Amalner.

4. Before we proceed, we would like to place on record the order passed by this Court on 06.07.2011. After the notices were issued, then by way of an interim relief, this Court had directed the petitioner to be released forthwith, if not required in any other case. Learned Advocate appearing for the petitioner upon inquiry submits that the petitioner was released immediately after the said order and therefore, the prayer clause 'A' has become infructuous and the learned Advocate for the petitioner then submits that he would be canvassing for prayer clause 'C' only i.e. in respect of compensation.

5. With the limited scope in the writ petition, taking into consideration the prayer clause 'C', the facts disclose that the petitioner was the accused in Sessions Case No.22 of 2010 before the learned Additional Sessions Judge, Amalner, District Jalgaon. He was charged for the offence

punishable under Section 302 of Indian Penal Code. By judgment and order dated 23.06.2011, he was acquitted. Prior to the said date i.e. 23.06.2011, it appears that the concerned Judge had asked the accused to furnish bail bonds in view of Section 437-A of Code of Criminal Procedure. When he failed to submit the sureties as directed, the learned Judge in clause No.2 of the operative order of the Sessions Case No.22 of 2010 observed thus :-

“2. The accused has failed to give bail under Section 437-A of the Cr.P.C. and, therefore, he be released after a period of six months from today.”

Therefore, as he was not released even after acquittal from 23.06.2011, he is claiming compensation. Learned Advocate appearing for the petitioner relies on the decision in **Farooq Abdul Gani Surve vs. State of Maharashtra**, [2012(3) Bom. C. R. (Cri.) 85], wherein this Court had directed the State of Maharashtra to find out the number of prisoners, who fall in the category of languishing in jail and who are still in jail even after they are acquitted by the Trial Court, merely because they are not in a position to furnish surety and then the matter was kept within a period of eight weeks for further orders. The interpretation that was made in this case is that the provision under Section 437-A of the Code of Criminal

Procedure is directory and not mandatory. He submits that the Additional Sessions Judge had come to the conclusion that the accused has not committed murder, then he ought not to have insisted for furnishing bail or the compliance under Section 437-A of Code of Criminal Procedure.

5. Per contra, the learned APP relies on the affidavit-in-reply by Mr. Vilas Bhimsen Sable, the In-charge Superintendent, District Prison Jalgaon, who has factually stated that in view of the interim order that was passed by this Court, he had released the petitioner and he states that petitioner is not entitled for compensation.

6. The first and the foremost fact to be noted is that the petitioner has not challenged the order passed by the learned Additional Sessions Judge to the extent of asking him to furnish surety in view of Section 437-A of the Code of Criminal Procedure. A pursis came to be filed when the arguments were to be advanced on behalf of the petitioner that the Additional Sessions Judge had noted in the roznama dated 22.06.2011 that the accused should furnish bail under Section 437-A of the Code of Criminal Procedure. Though the accused had the knowledge that he has to arrange for the bail, but since the date of arrest he was in jail he could not arrange. This pursis has been filed on 23.06.2011 and then the judgment appears to have been pronounced. If we consider the wordings of Section

437-A, it states that before the conclusion of the trial the Court trying the offence shall require the accused to execute bail bonds with sureties to appear before higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months. The position of law was then clarified by this Court in **Farooq Abdul Gani Surve (Supra)** on 17.10.2011 i.e. after the pronouncement of the judgment in the matter of petitioner that Section 437-A of the Code of criminal Procedure is directory and not mandatory, though there is word used “Shall”. Under such circumstance, the interpretation that was done by the learned Judge appears to be at that time justified or it was his own interpretation, which might be wrong, but it was the judicial order which is appealable or revisable. Even after the acquittal, there was an opportunity to the petitioner to file an application seeking extension of time to furnish surety, to release him at that point of time only on P.R. bond. Such step was not taken and, therefore, it cannot be stated that continuation of his custody till the order was passed by this Court can be said to be illegal detention. That custody was in view of a judicial order and, therefore, the petitioner is not entitled to any amount of compensation. The writ jurisdiction cannot be used in such matter when in spite of having alternative remedy, the petitioner has not adopted the

same. The petition is devoid of merits. It stands disposed of.

7. Rule is discharged.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm