



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1354 OF 2024

Hashim Abid Hussain Ansari,
Age-31 years, Occu:Business,
R/o-Machhi Bazaar, Near Municipal
Hospital, Galli No.7, Dhule,
Taluka and District-Dhule.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Secretary,
Department of Home Affairs,
Mantralaya, Mumbai-400 032,
- 2) Superintendent of Police,
Dhule, Taluka and District-Dhule,
- 3) Police Inspector,
Police Station, Azaadnagar,
Taluka and District-Dhule.

...RESPONDENTS

...
Mr. Abubakar M. Alamoodi Advocate h/f. Mr. G.R. Syed
Advocate for Petitioner.
Mr. A.M. Phule, A.P.P. for Respondents.
...

CORAM: SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.

DATE : 19th SEPTEMBER, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Petition has been filed for directing the respondents to pay compensation to the tune of Rs.5,00,000/- on account of unlawful custodial detention of the petitioner from 21st May 2024 to 28th May 2024.

2. Heard Mr. Alamoodi Advocate holding for Mr. G.R. Syed Advocate for petitioner and learned APP Mr. Phule for respondents.

3. Learned Advocate for the petitioner submits that the petitioner is a businessman. He was named in connection with Crime No.149 of 2024 for the offence punishable under Sections 143, 144, 147, 188, 186, 336 of the Indian Penal Code and Section 37(1)(c), 135 of the Maharashtra Police Act. The petitioner came to be arrested on 21st May 2024 itself and was produced before the learned Judicial Magistrate First Class at Dhule. Respondent No.3 had sought police custody. According to the petitioner the offences were bailable. The learned Judicial Magistrate First Class heard the police authorities and granted police custody till 24th May 2024, by observing that the facts also

disclose the offence punishable under Sections 326, 307 as well as 353 of the Indian Penal Code. Thereafter when he was produced on 24th May 2024, he was sent to Magisterial custody. If we consider the offences under which the First Information Report has been lodged, those are bailable offences and therefore, the arrest and further police custody of the petitioner was illegal. The constitutional rights of the petitioner are violated. Learned Advocate for the petitioner relies on the decision in ***Neelam Nitin Sampat vs. State of Maharashtra and others***, by the Co-equal Bench at Principal Seat of this Court, ***2023 All MR (Cri) 4095***, wherein the petitioner therein who was also detained in connection with bailable offences, was awarded compensation of Rs.2,00,000/- by holding that such detention violates the law and also violates the fundamental right i.e. right to live with dignity. Learned Advocate for the petitioner also submits that though the bail application was filed on 24th May 2024, before the learned Magistrate, he had rejected the application. Ultimately, the bail has been granted by the learned Additional Sessions Judge, Dhule on 27th May 2024.

4. Per contra, the learned APP strongly opposes the Petition and submits that the petitioner was produced before the learned

Magistrate within 24 hours of his arrest. The police custody was prayed and in the remand report, there was addition of Section 7 of the Criminal Amendment Act, which is non-bailable. The petitioner was represented by Advocate and he was heard. A detailed order has been passed. When it was pointed out that the offences are bailable, it was then observed while granting police custody that the offences under Section 307, 353 of the Indian Penal Code are made out. Thereafter when the petitioner was produced before the trial Court on 24th May 2024, detailed bail order has been passed and the application came to be rejected. Thereafter the petitioner had approached the Additional Sessions Judge. Though the bail was granted, it has been observed by the concerned Court also that the custody of the petitioner is not required and therefore, the bail has been granted. There was no observation to counter the statement in the order passed by the Magistrate that the offences under Sections 326, 307 or 353 of the Indian Penal Code are being attracted. The petitioner had not challenged the order of granting police custody till 24th May 2024 and therefore, when under the orders of the Court if he was sent to police custody and then his bail application has been rejected by a detailed order, it does not amount to illegal detention. The Writ Petition is

devoid of merits and therefore, deserves to be dismissed with costs.

5. The first and foremost fact to be noted is that the facts in *Neelam Nitin Sampat vs. State of Maharashtra and others*, (supra), were different. There, it was the bailable offence only. The husband of the petitioner was charged with offences under Section 354-A and 509 of the Indian Penal Code, which were bailable. Here it is to be noted that though the First Information Report came to be registered for the offences under Sections 143, 144, 147, 188, 186, 336 of the Indian Penal Code, Sections 37(1)(c) and Section 135 of the Maharashtra Police Act, when the petitioner was arrested and taken before the Magistrate, offence under Section 7 of the Criminal Amendment Act was also added. In bailable offence also there can be arrest and if the accused persons offer the bail then immediately such accused is required to be released on bail. But then none of the accused can say that for bailable offence he cannot be arrested. After the petitioner was arrested and produced before the learned Magistrate on 21st May 2024 and thereafter the Magistrate granted police custody taking into consideration the fact that the case also gives rise to Sections 353, 307 of the Indian Penal

Code, then it would be a judicial order. Further, it is to be noted that the petitioner was represented by Advocate of his choice on 21st May 2024 also. He never challenged the order of remanding him to police custody, passed on 21st May 2024. Further when he along with co-accused was presented on 24th May 2024, he was granted Magisterial custody and then he filed the bail application. By a detailed order, again observing that the facts are disclosing the offence under Section 353, 307 of the Indian Penal Code, say was called from the State. On the same day, by a detailed order, the application for bail was rejected. So this is also a judicial order. Thereafter, it appears that the petitioner approached the Additional Sessions Judge, Dhule and by order dated 27th May 2024, he came to be released. The ground appears to be different and there is no observation by the bail Court, as to whether the ingredients of Sections 326, 307 or 353 of the Indian Penal Code are getting attracted or not. Again under a judicial order the petitioner has been released.

6. Therefore, when there is a judicial order of sending a person to police custody and till the bail order is passed, it cannot be said that such person would be illegally detained. The Petition is devoid of merits and therefore, deserves to be

dismissed. We refrain ourselves from imposing cost in the facts and circumstances of the case.

7. The Writ Petition is dismissed.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/SEP25