



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

3 CRIMINAL WRIT PETITION NO.1055 OF 2025

M/s. Ashokrao Petroleum
Through Proprietor Chetan Ashok Zarekar,
Age 37 yrs., Occ.
R/o Kamargaon,
Tq. & Dist. Ahmednagar.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through Secretary,
Ministry of Law and Judiciary,
Hutatma Chowk, Madam Cama Road,
Mantralaya, Mumbai – 400 032.
- 2 Hon'ble Registrar General,
Bombay High Court,
Fort, Mumbai 400 032.
- 3 Ravindra Deorao Gawai,
Age Adult, Occ. 17th Joint
Civil Judge Senior Division &
Additional Chief Judicial Magistrate,
District & Sessions Court, Ahmednagar.

... Respondents

...

Chetan Ashok Zarekar, petitioner – Party-in-Person
Mrs. Priya R. Bharaswadkar, APP for respondent Nos.1 to 3

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

DATE : 22nd SEPTEMBER, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

. Heard the petitioner – Party-in-Person.

2 Present petition has been filed for following reliefs -

“(A) That, Hon’ble Court be please direct Respondent 1 to provide Rs.20 lakhs as financial compensation, cost & legal expenses to petitioner in context to unlawful issuance of non bailable warrant by Respondent 3 for restricting personal liberty of petitioner and causing mental harassment of petitioner. The same amount can be please recovered by Respondent 2 from Respondent 3.

(B) That, Hon’ble Court be please direct Respondent 2 to make detailed administrative inquiry to find and ascertain why Respondent 3 had apparently acted in connivance with BPCL official, in referred case SCC/4022/2024 and also Cri.M.A./13/2025 at Ahmednagar Court.

(C) That, Hon’ble Court, in relation to complaint of judicial impropriety/misconduct as per Exhibit ‘F’, please direct to Respondent 2 to take strong Disciplinary action against Respondent 3, as per Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.”

3 The petitioner is an accused in Summary Criminal Case

No.4022/2024 pending before respondent No.3. The said case has been filed by Bharat Petroleum Corporation Limited on 22.04.2024 under Section 138 of the Negotiable Instruments Act, 1881 after alleged dishonour of cheque to the tune of Rs.1,71,019/-. Petitioner submits that he appeared *suo motu* in the said case and he submitted application for bail. Respondent No.3 granted bail and directed the petitioner to furnish Personal Bond of Rs.15,000/- and solvent surety of Rs.15,000/-. Immediately, on the same day the petitioner executed Personal Bond. He informed the Court that he would be submitting cash security on the next date. On the next date i.e. on 02.08.2024 around 3.30 p.m. complainant filed application for issuance of non bailable warrant against petitioner and accordingly, the same was granted by respondent No.3, taking into consideration the fact that accused is absent. The petitioner was travelling from Pune to Ahmednagar in rainy season and in order to demonstrate this fact he has attached the ticket, which was purchased by making e-payment to MSRTC. It is stated that petitioner reached around 4.15 p.m. on that day and wanted to complete the procedure for cancellation of non bailable warrant. It is then stated that the said order passed by respondent No.3 is unlawful and it is not a judicial act. It is also stated that it is in contempt or violating the guidelines of the Hon'ble Supreme Court in **Satender Kumar Antil vs. Central Bureau of Investigation and another** [2025 SCC OnLine SC 1578] and **Arnesh Kumar vs. State of Bihar** [2014 (8) SCC

273]. It is alleged that respondent No.3 acted in connivance with the BPCL officials on 21.12.2024. Petitioner made further application Exh.60 for imposing cost on BPCL for making unlawful application for issuance of non bailable warrant against petitioner, however, the arrest that was made was against the law. A complaint has also been filed against respondent No.3 for judicial impropriety that has been shown. In another incident, though the Advocate for BPCL was not present or even official of BPCL was not present, they were marked as present by respondent No.3. Therefore, the petitioner has made above said prayers.

4 The petitioner – Party-in-Person has taken us through the entire documents and reiterated his contentions in the petition.

5 The first and the foremost fact that is required to be noted is that as the offence under Section 138 of the Negotiable Instruments Act is bailable, the bail was granted. When order was passed to furnish the surety, the petitioner cannot insist upon deposit of cash security instead of surety. It depends upon the discretion of learned Magistrate. It appears that petitioner is under some wrong belief that offence once bailable would always be bailable. Section 436(2) of the Code of criminal Procedure, 1973 provides that -

“Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.”

Therefore, when the person who has been allowed to be on bail if remains absent, then the concerned Magistrate has powers under the above Section not to continue the bail. Admittedly, on the day i.e. on 02.08.2024, which was for furnishing surety, the petitioner had not reached Court till 4.15 p.m. and it appears from the record that accused was called till 16.30 hours and was found absent, then nonailable warrant has been issued. There is no document placed on record by petitioner that after he allegedly went to Court at 4.15 p.m., he filed an application for cancellation of bail. Certainly, he could have filed that application by placing on record the copy of his e-ticket. He was aware about the fact that Court would open at 11.00 a.m., then if he wanted to travel from Pune to Ahmednagar, which might take 3 to 3 ½ hours, he ought to have started his journey 3 to 3 ½ hours prior to 11.00 a.m. E-ticket Exh. 'D' shows that he purchased ticket at 12.35 p.m. That means, he started from Pune at 12.35 p.m. He is not addressing as to why he

started late. Then he filed Exh.60 for imposing cost on the complainant for wrongful attempt of unlawful arrest. That was decided by learned Judge on 31.01.2025, wherein it is stated that accused appeared after Court hours and filed application for cancellation and non bailable warrant issued against him has been cancelled. If that non bailable warrant was cancelled even taking the application of petitioner after Court hours, then it cannot be stated that respondent No.3 has acted against the legal procedure or violated any guidelines given by Hon'ble Supreme Court. It appears that he was never arrested. Intentionally the petitioner has not stated on which day he was arrested at any point of time in connection with Summary Criminal Case No.4022/2024. There is no act of judicial impropriety or misconduct by respondent No.3 and, therefore, no question of payment of compensation. Unnecessarily the present petition has been filed, may be with vengeance. There is also no question of recommending disciplinary inquiry against respondent No.3. We would have proceeded to impose cost upon the petitioner for filing such frivolous petition, however, since he appears in person, we restrain ourselves. The Criminal Writ Petition stands dismissed.

(HITEN S. VENEGAVKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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