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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4055 OF 2025

Jitendra Namdev Daravkar
Age. 38 yrs, Occ. Cable and Internet
provider, R/at. Village Ghot, At. Post
Koynavale, Tal. Panvel, Dist. Raigad,
At presently lodged in Taloja Police Station
Through his real brother & next friend
Mr. Pradip Namdev Daravkar,
Age : 45 years, Occ.: Business,
R/at. Village Ghot, At. Post Koynavale,
Tal. Panvel, Dist. Raigad, ...Petitioner

Versus

- 1 The State of Maharashtra
(Through Taloja Police Station)
2. Ajaykumar Ramvilas Sharma,
Age : 40 yrs. Occu : Service,
R/o. A-503, Smit CNS, Plot No.9,
Sec-35, Kharghar, Tal. Panvel,
Dist. Raigad ...Respondents

Mr. Saurabh Bhutala i/by Mr. Harshad Sathe, Advocate for the
Petitioner.

Mr. S.V. Gavand, APP for Respondent No.1/State.

Mr. Mayur Mohite a/w Mr. Jayesh Bhosale, Mr. Ganesh Shelar,
Advocate for Respondent No.2.

Mr. Sunil S. Gharat, PSI, Taloja Police Station, present.

CORAM : RAVINDRA V. GHUGE
&
GAUTAM A. ANKHAD, JJ.

DATE : 24th JULY, 2025

ORAL JUDGMENT (Per : RAVINDRA V. GHUGE , J)

1. When this matter was called out, the original Complainant approached the Court, contending that he has not been impleaded as a Respondent. He desires to contest this Petition. The learned Advocate for the Petitioner submits on instructions that he is willing to add him. Leave to add the Original Complainant as Respondent No.2. Addition be carried out forthwith. The learned Advocate, Mr. Mohite appears on behalf of the added Respondent No.2.

2. Rule. Rule made returnable forthwith and heard finally, by the consent of the parties.

3. The Petitioner has put forth Prayer Clauses (A), (B) and (C), as under :-

A. That in relation to FIR No.257 of 2025 dated 19.07.2025 registered with Talaja Police Station for offences u/s. 118(2), 115(2), 352, 351(2), 324(4) and 3(5) of the Bharatiya Nyaya Sanhita, 2023, this Hon'ble Court be pleased to issue a writ of Habeas Corpus or any other appropriate writ, order or direction declaring the arrest and detention of the Petitioner dated 21.07.2025 as illegal, unconstitutional, and violative of Articles 21 and 22 of the Constitution, and of Section 174(2) of The Bharatiya Nagarik Suraksha Sanhita, 2023,

B. That this Hon'ble Court be pleased to quash and set aside remand order dated 21/07/2025 passed by the Ld. JMFC, Panvel, in FIR No.257 of 2025 dated 19.07.2025 registered with Taloja Police Station for offences u/s. 118(2), 115(2), 352, 351(2), 324(4) and 3(5) of The Bharatiya Nyaya Sanhita, 2023, remanding the Petitioner to Police custody till 24/07/2025, being violative of Section 174(2) of The Bharatiya Nagarik Suraksha Sanhita, 2023,

C. This Hon'ble Court be pleased to direct the immediate release of the Petitioner in FIR No.257 of 2025 dated 19.07.2025 registered with Taloja Police Station for offences u/s. 118(2), 115(2), 352, 351(2), 324(4) and 3(5) of The Bharatiya Nyaya Sanhita, 2023,"

4. The learned Advocate for the Petitioner submits on instructions that the Petitioner is not pressing Prayer Clause (D) and the same may be treated as having been deleted. Ordered accordingly.

5. Having considered the strenuous submissions of the learned Advocates for the respective sides, we have commenced the dictation of this order at 5:30 p.m.

6. The Petitioner was an Accused in a Non-cognizable Information Report (for short 'NCR'), which was registered U/s.

174 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short '**BNSS**'). The complaint lodged by Respondent No.2, a cable operator, was a narration of an incident that occurred on the terrace of his customer. The Petitioner is alleged to have abused the Complainant and used his hands to beat him. Based on such complaint, Sections 115(2) and 352 of the Bharatiya Nyaya Sanhita, 2023 (for short '**BNS**'), were invoked. An NCR number 1171 of 2025 was registered on 1st July, 2025. A copy of the NCR is tendered by the learned APP, which is taken on record and marked as '**X-1**', for identification.

7. The grievance of the Petitioner is that on 19th July, 2025, the Taloja Police Station, which had earlier registered the NCR, registered a First Information Report (in short '**FIR**') No.257 of 2025 at 21:16 hours. Sections 118(2), 351(2), 324(4) and 3(5) of the BNS, were invoked and a cognizable offence was registered. Based on the same, the Petitioner has been arrested. He was granted three days Police Custody Remand (in short '**PCR**'), which is to end today. The Petitioner is presented before the Magistrate for either a PCR or a Magisterial Custody Remand (in short '**MCR**').

8. The Petitioner relies upon a reported Judgment of this Court delivered at Goa in *Asif Khan Pathan V/s. State through PP and Others, 2023 SCC OnLine Bom 2217*. In the said case, an NCR was earlier recorded and subsequently, a cognizable offence was registered in the form of an FIR. The Division Bench of this Court at Goa has concluded in Paragraph Nos.32 to 48, as under :-

“32. This safeguard is provided in the Code itself so that the Informant subsequently and after changing his mind or on some ill advice, may try to lodge another complaint on the same set of facts, on the same event or Incident but by incorporating material which would permit the Police to register FIR when a non-cognizable case is already registered by it. The wordings of Section 155(2) as quoted earlier are mandatory. It specifically provides that no police officer shall investigate a non-cognizable case without the order of a Magistrate having the power to try such a case or commit the case for trial.

33. The intention of the Legislature clearly goes to show that when a non-cognizable case is registered with regard to an incident, the Police are prevented from investigating the same incident or the substance of Information even if, subsequently, additional information is placed before it either by the informant or by the victim, without the leave of the Magistrate. It is a safeguard provided under the law so as to protect the complaints/information twisted or added after the passage of some time so as to register an FIR by ignoring NC complaints.

34.

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For example, if the information is received about assault and it is registered as a non-cognizable case

under Section 323 Cr. P.C. at the initial stage but subsequently it comes to the knowledge of the Police that due to such assault, in fact, a grievous injury is caused, the officer-in-charge of the Police Station is required to approach the concerned 155(2) with the additional Magistrate under Section material/information praying that he be permitted to investigate the non-cognizable case. Once such permission is granted, the Investigating officer is even free to apply the correct provision of the IPC or any other penal provision which comes within the ambit of a cognizable case. This is only an example which is disclosed to fulfill the condition imposed under Section 155(2) of Cr. P.C.

35. Mr. Faldessai placed reliance in the case of Mansingh (supra), to submit that the Police are having powers to register FIR under Section 154 of Cr. P.C. once information of cognizable offence is disclosed, even if NC is registered on the earlier occasion.

36. In Mansingh (supra), petition under Section 482 of Cr. P.C. was filed for quashing of FIR mainly on the ground that such FIR was lodged on false and fabricated material and only to take revenge. It is no doubt true that the facts of the case discloses that the informant initially went to the Police Station and ventilated her grievance regarding the alleged incident. Such information was registered as non-cognizable case under Sections 323, 504 and 506 of IPC and the Informant was told to approach the concerned Magistrate. A few days after the alleged Incident and registration of NC, the informant, after consulting her husband and others, again visited the Police Station and claimed that said Mansingh and others abused her and her husband on caste, assaulted her and her daughter-in-law with kicks, fist blows and with the handle of axe. One of the accused caught hold of the hand of daughter-in-law and tried to molest her. The assailants also gave threats. The

Police registered offence under various sections of IPC and also under Section 3(1)(xi) of the SCST (Prevention of Atrocities) Act. While arguing the said matter, which is found recorded in para 5, it is clear that the entire argument on behalf of Mansingh was only on the contention that entire case is false and fabricated and no such incident occurred on that day. No ground was raised with regard to Section 155 (2) of Cr. P.C. and the non-cognizable case registered earlier. Thus, the decision in Mansingh (supra) is distinguishable and not helpful to the Respondents.

37. In the present petition, the Petitioner has specifically claimed in para 18 that FIR No. 41/2023 is based on the same facts for which the Petitioner was earlier arrested under Section 151 and the NC complaint was also registered as regards the same. Again, in para 22 of the petition, the Petitioner has referred to the observations of the Trial Court while granting anticipatory bail to the Petitioner.

38. Grounds No. 2, 3 and 5 in the present petition are specifically with reference to powers of the Police to investigate a non-cognizable case without obtaining permission from the Magistrate under Section 155(2) of Cr. P.C.

39. In Tulsidas Gopal Naik v. State of Goa, 2022 SCC OnLine Bom 6691, this Court while dealing with a similar contention and on considering provisions of Section 155 of Cr. P.C., observed in paras 25 and 29 which reads thus:-

“25. Perusal of the above provision clearly goes to show that when the officer in-charge of a police station considers any complaint as non-cognizable and enters or cause to be entered the substance of information in a book to be kept by such officer in such form as the State Government may prescribe and refer the Informant to the Magistrate, he is not entitled

to investigate into such matter without the order of a Magistrate.

29. It is not an empty formality but certain rights accrue in favour of the said party against whom complaint or allegations are made. The word "shall" used in Sub-section (2) of Section 155 of Cr. P.C. clearly shows the Intention of the Legislature and mandate that the police officer shall not Investigate a non-cognizable case without orders of the Magistrate having power to try such case. Therefore, once an opinion is formed in writing and conveyed to the informant that his case is non-cognizable case, the in-charge of the police. station is certainly precluded from carrying out any further investigation in such non-cognizable case/complaint without the order of the jurisdictional Magistrate. There is a specific purpose for which Sub-section (2) of Section 155 is Introduced. Such purpose cannot be taken away only by saying that the officer Incharge did not record substance of information of non-cognizable case in the book maintained in the police station."

40. In Tulsidas Gopal Naik (supra), it was contended that initially the Police registered a non-cognizable case on receiving the information and directed the informant to approach the Magistrate, but due to some pressure on the police officer from higher authorities, he registered it as a cognizable offence. The facts in the matter in hand are quite similar. The wife of Respondent No. 3 went to the Police Station on the day of incident itself and lodged her complaint, which is already reproduced In para 26. This information was considered as non-cognizable case and the informant was advised to approach the proper Court of law under Section 155 of Cr. P.C. On the next date, i.e. on 20.03.2023, Respondent No. 3 filed another complaint in connection with the same

Incident and by giving some additional information, which Police considered as containing ingredients for registration of cognizable offence.

41. At this stage, it is necessary to note that Respondent No. 3 went to the Police Station on the next day even though he very well knew that his wife lodged the complaint on the previous day and that it was registered as a non-cognizable case. The question remains as to whether the wife of Respondent No. 3 failed to disclose all the facts to the Police and/or on the other side, the Police failed to record all the facts disclosed by the wife of Respondent No. 3 while registering NC complaint. On both counts, the law provides a specific procedure. If the Informant was not satisfied with the recording of her complaint by the Police, which is not at all the case put forth in this matter except claiming orally while arguing the matter, the said Informant failed to approach the Superintendent of Police under Section 154(3) of Cr. P.C. The only inference is that whatever was disclosed by the wife of Respondent No. 3 on 19.03.2023 and considered as non-cognizable case was properly recorded by the Police. The said Informant on showing dissatisfaction on recording the information correctly by the Police, ought to have approached the Superintendent of Police with all the details. No such procedure was adopted. Thus, it shows that the Police recorded the information correctly as disclosed by the informant on 19.03.2023, as non-cognizable case.

42. Secondly, when the Police on the next day i.e. on 20.03.2023, received some additional information about the same incident which was provided to them by Respondent No. 3, were very well aware that NC complaint is registered in connection with the same incident and thus, was duty-bound to approach the concerned Magistrate under Section 155(2) of Cr. P.C. for permission to Investigate. There was no Impediment on the investigating agency to approach the concerned Magistrate.

43. The view taken by this Court in Tulsidas Gopal Naik (supra) is applicable to the facts and circumstances of this matter. There is no material to deviate from such view.

44. The learned Counsel Mr. de Sa claimed that FIR is lodged on the basis of false and fabricated material and only to harass the Petitioner. Though, at this stage, it is not for us to go into the veracity or otherwise of the allegations in the complaint, we cannot ignore that firstly, the information given to the Police by the wife of Respondent No. 3 on 19.03.2023 was not in connection with any cognisable offence. The Police recorded such information as a non-cognizable case and advised the Informant to approach the concerned Magistrate if so desired. Secondly, Respondent No. 3, who is the husband of the informant in the NC case, did not file any affidavit of himself or of his wife stating that the Police did not record the correct information. Even otherwise, we are of the view that the option was available with the wife of Respondent No. 3 to approach the Superintendent of Police under Section 154(3) of Cr. P.C., which has not been exercised. Thirdly, the contents of the NC complaint and the contents of the FIR lodged by Respondent No. 3 are quite similar and in the sequence of events, except for a few additions, which, according to us, appear to be belatedly introduced only to bring the said material within the ingredients of cognisable offences.

45. Even though we granted time to Respondent No. 3 to file a reply affidavit, no such affidavit was placed on record. Thus, it is clear from the contents of the non-cognizable case and the contents of the FIR that it relates to the same Incident which occurred on 19.03.2023 at around 11 30 hours. However, by adding some material to the complaint filed by Respondent No. 3, the Police Officer/Respondent No. 2 registered it as an FIR without following the

mandatory provision of Section 155(2) of Cr. P.C. The mandatory provisions of Section 155(2) cannot be bypassed in this manner to give the investigating agencies power to investigate non-cognisable offences without the permission of the magistrate simply based upon belated additions to the original non-cognisable complaint or the complaint which according to the agencies had only disclosed an non cognisable offence. That was not the ratio of the decision relied upon by Mr. Faldessai.

46. The entire incident appears to be the differences between the flat owners in a society wherein there are only nine flats. The dispute appears to be in connection with the parking space, disposal of garbage, etc. It is unfortunate that the occupants of only nine flats are unable to reside happily and without any serious quarrel. Be that as it may, the contention of the Petitioner needs to be accepted. The FIR vide Crime No. 41/2023 registered at Old Goa Police Station is clearly hit by the provisions of Section 155(2) of Cr. P.C. and needs to be quashed and set aside.

47. Similarly, we cannot brush aside Mr. de Sa's contention that the said FIR was lodged only to wreak revenge on the Petitioner who lodged some complaints against Respondent No. 3 and his wife and other flat owners. This does appear to be a case of a counterblast. Because the initial complaint of the wife was recorded as an NC based on which the Petitioner was arrested but released under Section 151 of Cr. P.C. by Respondent No. 2, the next day, additional allegations were made with embellishments regarding the very same incident. The Investigating agencies should not have registered such FIR and sought to investigate Into it without leave of the Magistrate under Section 155(2) of CrPC. Neither the parties nor the investigating agencies can achieve Indirectly, what the law prohibits directly. These are matters of liberty and Article 21 is clear when it provides that no

person shall be deprived of liberty except otherwise than by the procedure established by the law.

48. For all the above reasons, the FIR No. 43/2023 dated 20.03.2023 registered at Old Goa Police Station for the offences punishable under Sections 323, 506(II), 354, 509, 427 of IPC against the Petitioner, is hereby quashed and set aside. The Rule is made absolute in above terms. Parties shall bear their own cost."

9. It was, thus, concluded that, if on the narration of additional facts, the Police desires to register an FIR in the backdrop of a non-cognizable offence having been registered with reference to the same incident, he is required to approach the Magistrate under Section 174 of the BNSS (earlier Section 155 of the Cr.P.C.), seeking an order to investigate. Without such order of the Magistrate, the officer is not expected to investigate a non-cognizable case, which is later on converted into an FIR. Under Section 174(2) of the BNSS, with the clear bar on investigating an NCR without the order of a Magistrate, Sub-section 3 of Section 174 of the BNSS, permits a Police Officer, after receiving such order, to exercise the same powers in respect of the investigation as an officer in charge of a Police Station may exercise in a cognizable case.

10. The learned Advocate for the Complainant has vehemently contended that the Petitioner herein has not prayed for the quashing of the FIR. So also, he realised that his exact version was not properly recorded by the Police Officer, when he had lodged his complaint on 01/07/2025. He, therefore, had given a statement on 03/07/2025, which was considered on 19/07/2025 and an FIR was registered. The learned Advocate for the Petitioner submits that he has invoked the Writ of Habeas Corpus. His arrest is illegal on account of the illegal registration of the FIR in the light of Article 22 of the Constitution of India.

11. What has been done by the Police Officer in the present case is that, an NCR was registered on 1st July, 2025. No steps were taken to seek permission of the Magistrate U/s. 174 (1 and 2) of the BNSS, to investigate into the said complaint. On 3rd July 2025, the Complainant tendered an additional statement in the nature of an Application. The Police Officer recorded the said statement on 19th July, 2025 and registered the FIR No.257 of 2025, and arrested the Petitioner, in connection with the same offence.

12. In *Tulsidas Gopal Naik (supra)* and *Asif Khan Pathan*

(*Supra*), this Court concluded that the Police could not have investigated into an NCR, without the leave of the Magistrate and, therefore, should not have registered an FIR, based on the same incident. In the present case, the Police Officer initially recorded an NCR and on receiving an additional statement dated 3rd July, 2025 from the Petitioner, registered an FIR on 19th July 2025, on the same grounds and the same incident, *albeit* with the addition of a non-metallic optic rod as being the weapon used to purportedly beat the Complainant. Thus, the Complainant improvised his version about the same incident, which was subject matter of the NCR and the Police Officer registered an FIR, which was the basis for arresting the Petitioner.

13. In view of the above, we conclude on the facts of the case and in the light of the law laid down in *Tulsidas Gopal Naik (supra)* and *Asif Khan Pathan (Supra)*, that the FIR dated 19th July, 2025, could not have been registered. The arrest of the Petitioner is, therefore, unsustainable and wrongful. This being a fit case, we are invoking the Writ of Habeas Corpus to conclude that the Petitioner has been detained without following the due procedure laid down in law. Consequentially, this **Writ Petition is allowed** in terms of Prayer

Clause (A), reproduced above. All consequential actions are rendered illegal and the Petitioner shall set to freedom.

14. Since the dictation of this order has concluded at 6:00 p.m., the learned APP fairly submits that the Police Authorities presently in the Court of the learned Magistrate, along with the Petitioner, will not press for PCR. At this juncture, the learned Advocate for the Petitioner submits on instructions received via WhatsApp message that the learned Magistrate has granted an NCR for 14 days. In view of our judgment, the said order of the learned Magistrate shall lose its efficacy.

15. Rule is made absolute in the above terms.

(GAUTAM A. ANKHAD, J.)

(RAVINDRA V. GHUGE, J.)