

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPW) 5/2024 IN
CRIMINAL WRIT PETITION NO. 768/2023

(Mr. Pawan Shamdundar Sarda & ors. Vs. State of Maharashtra & ors.)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. Rahul M. Bhangde, Advocate for applicants/petitioners.
 Mr. M.K. Pathan, APP for non-applicant/respondent Nos. 1 to 5.
 Mr.C.M. Samarth, Advocate for non-applicant/respondent No.6.

CORAM: ANIL L. PANSARE AND
M. M. NERLIKAR, JJ.

DATED : 05/08/2025.

Heard.

2. By the present application, the petitioners seeks to incorporate the prayer seeking direction to the respondent Nos. 3, 4, 5 and 7 to register FIR against respondent No.6 and further take action in terms of provisions of Section 15 of the Environment (Protection) Act, 1986 ("the Act of 1986") and the Noise Pollution (Regulation and Control) Rules, 2000 ("the Rules of 2000").

3. Learned APP submits that effective remedy is available to the petitioners before the jurisdictional magistrate under Section 156(3) of the Code of Criminal Procedure.

4. True it is that effective remedy is available to the petitioner, the question is, despite noting the violation of the provisions of the Rules of 2000 and the Act of 1986, why the authority has not taken the action against the respondent No.6. It is in this context, we are inclined to permit the petitioners to amend the petition.

5. In view of above and for the reasons set out in the application, the application is allowed.

6. The petitioners shall amend the petition within a period of one week from today and serve the amended copy to other side.

7. Once amendment is carried out, issue notice to the newly added respondents returnable on 20.08.2025. In addition to regular mode of service, learned counsel for petitioner is at liberty to serve newly added respondent through standing counsel.

CRIMINAL WRIT PETITION NO. 768/2023

1. The petitioners raised grievance of violation of Noise Pollution Rules as also provisions of Environment Protection Act. The matter pertains to permission dated 13.10.2023 granted by respondent No.4 to respondent No.6 to hold Garba Festival during Navratri Festival, 2023. The complaint was lodged by the petitioners alleging that the noise level at spot exceeds the permissible limit. In response, the Police Official of Sitabuldi Police Station, Nagpur appears to have visited the spot and recorded noise level to find that it exceeds the permissible limits.

2. Learned APP has invited our attention to the reply filed by respondent No.5. He has forwarded the report to the Maharashtra Pollution Control Board for taking further action. He submitted that to the best of knowledge, the Pollution Board has lodged prosecution against respondent No.6. He seeks time to take instruction and place on record the present status of such prosecution, if lodged.

3. Learned counsel for petitioners submits that the course as available to respondent No.5 is to not forward the report to the Maharashtra Pollution Control Board, but was to take action in terms of Rule 7 of the Rules of 2000. Rule 7 reads as under:-

“7. Complaints to be made to the authority .-

(1) A person may, if the noise level exceeds the ambient noise standards by 10 dB(A) or more given in the corresponding columns against any area/zone (or, if there is a violation of any provision of these rules regarding restrictions imposed during night time), make a complaint to the authority.

(2) The authority shall act on the complaint and take action against the violator in accordance with the provisions of these rules and any other law in force.”

4. The learned counsel for petitioners submits that the Authority is duty bound to act on the complaint and take action against the violator in accordance with the provisions of these Rules as also the provisions of other law which are in force. In this context, learned counsel for petitioners has invited our attention to Section 15 of the Act of 1986 which provides that, for penalty for contravention of the provisions of the Act of 1986 and the Rules of 2000 as also orders and direction. Sub- Section (1) to Section 15 of the Act of 1986 provides that, for such contravention/violation the person responsible is liable for punishment for imprisonment for term which may extend

to five years or for fine which may extend to one lakh rupees or with both. Learned counsel for petitioners submits that in terms of aforesaid provisions read with Rule 2(c) and 7 of the Rules of 2000, the authority ought to have taken action against respondent No.6.

5. Rules 2(c) of the Rules 2000 defines the authority to mean, amongst other, the District Magistrate, Police Commissioner, or any other officer not below the rank of the Deputy Superintendent of Police designated for the maintenance of the ambient air quality standard in respect of noise under any law for the time being in force. The State Government is under obligation to authorize such officer described under the definition of the authority to take action against the person contravening the provisions relating to noise pollution.

6. We accordingly, direct learned APP to take instructions as to who is the jurisdictional authority for the purpose of taking action relating to the complaint lodged by the petitioners and further as to what action has been taken by the said Authority having found that the respondent No.6 has violated/contravened the noise pollution. Learned APP shall file report before the next date.

7. Stand over to 20.08.2025.

(M. M. NERLIKAR, J.)

(ANIL L. PANSARE, J.)