



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.874 OF 2025

Pitambar son of Maniram Dharkar

.Vs.

The State of Maharashtra, thr. PSO, PS, Sadar Nagpur and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr. P.S. Wathore, Advocate for the petitioner.

Mr. A.B. Badar, APP respondent No.1/State.

CORAM : ANIL L. PANSARE AND
RAJ D. WAKODE, JJ.
DATED : 21.11.2025.

On the previous date, following order was passed:-

“ The petitioners have approached this Court seeking declaration of their detention/custody is illegal and that they should be released forthwith in the proceedings arising out of Crime No.669/2023 registered with Sadar Police Station Nagpur for offence punishable under Sections 120B, 411, 413, 381, 409, 418, 420, 467, 468, 471 and 477-A of the Indian Penal Code.

2. The argument is that the learned Magistrate has taken the petitioners in custody when he appeared before the Court upon receiving notice dated 08/01/2024 to appear before the Judicial Magistrate, First Class, Court 6, Nagpur. The Police had by the said notice informed the petitioners that charge-sheet will be filed on that date and accordingly he was called upon to remain present in Court.

3. *According to petitioners' counsel, the petitioners appeared and they were taken in custody.*

4. *When enquired as to why the order passed by the Magistrate taking the petitioners in custody is not produced, counsel for the petitioners submits that the petitioners had instructed him that oral order has been passed, however he seeks time to take further instructions.*

5. *It appears to us from the aforesaid submissions that petitioners have misled the counsel and unfortunately the counsel has also failed to discharge his duties while appearing before the Court in the sense it was/is very fundamental that the Magistrate's order of taking the person in custody/detention is always passed in written form. There cannot be oral detention unless situation is extraordinary, in which case oral instructions/order will have to be reduced in writing by the Magistrate.*

6. *In that sense we find that the petitioners have suppressed material fact by not producing on record the order passed by the Judicial Magistrate for taking the petitioners in custody.*

7. *We may note here, as informed by the counsel that both the petitioners had approached the trial Court for seeking regular bail under Section 439 of the Code of Criminal Procedure. The trial Court was pleased to reject the application. Thereafter the petitioners approached the High Court seeking similar relief, but to no avail. The petitioners' detention, is thus continued under the judicial order.*

8. *At this stage, counsel for the petitioner submits that petitioner No.1 alone was given*

notice dated 08/01/2024 to appear before the Court. Petitioner No.2 was arrested on 02/01/2025. Thus the earlier submissions made by the petitioners' counsel has been now modified.

9. In any case, the order of petitioners custody is not placed on record. That apart, the petitioners had approached the trial Court and thereafter High Court for seeking regular bail. The petitioners, particularly petitioner No.1 had opportunity to put forth the plea of illegal detention. He has not done so. The petitioners are thus detained under the orders passed by the trial Court as also the High Court.

10. In the circumstances, we would like to test the bonafides of the petitioners in seeking declaration that their detention is illegal, particularly when the orders passed by the trial Court and this Court have attained finality.

11. The petitioners shall accordingly deposit an amount of Rs.25,000/- each in this Court within one week from today, failing which, petition shall stand dismissed for non-compliance of order without further reference to Court.

12. List in the week commencing from 17/11/2025.”

2. The petitioners have not deposited the amount as directed. If that be so in terms of order, the petition stood dismissed for non compliance of the order.

3. In the circumstances, Registry ought not to have listed the petition before the Court. It however, appears that since we have directed to list the petition in the week commencing from 17.11.2025, the Registry has

listed petition today. The order of listing should have been understood by the Registry in terms of what we have stated in paragraph 11. In other words, if the petition is dismissed for non-compliance of order, the Registry should not have listed the petition.

4. Be that as it may, in terms of order dated 06.11.2025 the petition stood dismissed. No further order is required. The Registry shall process to recover the amount from the petitioners as land revenue.

[RAJ D. WAKODE, J]

[ANIL L. PANSARE, J.]

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