Meena Ashok Gabda vs Manoj Gopaldas Taneja And Others on 20 December, 2024

2024:BHC-AUG:30568

902WP1905-24.odt

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

902 CRIMINAL WRIT PETITION NO. 1905 OF 2024

1. Meena Ashok Gabda,
Age : 58 years, Occu. Household,
R/o : Block No.F-2, Room No.9/10,
Kumar Nagar, Sakri Road, Dhule .....PETITIONER
(Orig. Complainant)

VERSUS

1. Manoj Gopaldas Taneja,
Age : 55 years, Occ: Labour,
R/o: Kumar Nagar, Sakri Road,
Dhule
2. Mahak Sunil @ Dattan Popali,
Age: 32 years, Occ: Labour,
R/o: As above
3. Dattan @ Sunil Davram @ Gopaldas Popali
Age: 61 years, Occ:Labour,
R/o: As above
4. Mohit Sunit @ Dattan Popali
Age: 31 years, Occ: Labour
R/o : As above
5. The State Of Maharashtra
6. S.S. Jadhav,
Investigating Officer,
Dhule City Police Station, Dhule
(Respondent No.6 deleted
as per Court's order dt:25.11.2024) ...RESPONDENTS

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Mr. Satyajit S Bora, Advocate for Petitioner
Mr. H.V. Tungar, Advocate for Respondent Nos. 1 to 4
Mr. V. M. Chate, Advocate for Respondent No.5 - State

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CORAM : Y. G. KHOBRAGADE, J.

RESERVED ON : 13.12.2024
PRONOUNCED ON : 20.12.2024
JUDGMENT :

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1. Rule. Rule made returnable forthwith. With the consent of both the sides, it is heard finally at the stage of admission.

2. By the present Petition, the Petitioner/Informant invoked jurisdiction of this Court under Article 227 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita and takes exception to the order dated 15.11.2024 passed by the learned Additional Sessions Judge, Dhule in Criminal Revision Application No.74 of 2024.

3. Facts giving rise to the present Petition are that on 03.11.2024, the Petitioner/Informant lodged an F.I.R No.513 of 2024, alleging that, Jitendra Taneja, Auto Rikshaw driver started loud music on his Auto Rikshaw at midnight on 02.11.2024, therefore, he and other residents asked Jitendra Taneja to stop the music, but he was annoyed. It is further alleged that, on 02.11.2024 at about 11.30 p.m. her son Manjit was bursting fire crackers with her grand children and she was sitting on stair of her house, at that time the accused Jitendra came in 2 of 12 ((3)) 902WP1905-24 front of her house and again started playing music loudly and abused her son. Therefore, she visited the accused Jitendra but the accused caught her hand with intention to outrage her modesty. At that time other accused i.e., Respondent Nos.1 to 4 came there. The accused Respondent No.1 Manoj Taneja was holding knife in his hand and gave a blow of knife on head and back of Kapil. The accused No.4 Mohit assaulted with the stick to Manjit, whereas Respondent No.2 Mahak beat Ishant with stick and other accused assaulted with kicks and fist blows. On the basis of said report, a Crime No.513 of 2024 registered against the accused persons for the offences punishable under Sections 74, 118(1), 189(2), 191(1), 191(2), 190, 352 of Bhartiya Nyaya Sanhita and Section 37(1)(3) and 135 of the Maharashtra Police Act.

4. On 03.11.2024, the Investigating Officer arrested the accused Respondent Nos.1 to 4 and produced before the learned In- charge Chief Judicial Magistrate, Dhule on 04.11.2024 with written application seeking remand of the Respondents accused for a period of 5 days with reasons that, the accused have committed an offence and weapons need to be recovered, however, the learned In-charge Chief Judicial Magistrate refused to grant PCR of the accused persons and remanded them in MCR on 10.11.2024 because there is no question of recovery.

5. Being aggrieved by the said order, the Petitioner de facto complainant approached before the learned Sessions Court by filing Criminal Revision Application No.74 of 2024. On 15.11.2024, the learned Additional Sessions Judge, Dhule passed the impugned order and dismissed the Revision because it is not maintainable.

6. The learned counsel appearing for the Petitioner submits that the Petitioner lodged a F.I.R on 03.11.2024 and specifically alleged that the accused Respondent No.1 Manoj Taneja assaulted with knife on the head and back of Kapil, Mohit Respondent No.4 assaulted with stick to Manjit, whereas accused No.2 Mahak beat Ishant with stick and other accused persons assaulted with kicks and fist blows. Therefore, recovery of knife and sticks are necessary. Therefore, the learned In-charge, Chief Judicial Magistrate ought to have remanded the accused persons in police custody for recovery of the weapons because the Investigating Officer submitted the report on 12.11.2024 and insisted for remand of the Respondents accused for recovery of weapons. The Respondents/ accused persons have not produced knife and sticks, which have been used while committing the offence. Therefore, it is obligatory on the part of the learned Magistrate to remand the accused persons in Police custody for recovery of weapons, however, the learned In-charge Chief Judicial Magistrate failed to consider prayer of the Investigating Officer.

Therefore, no recovery of weapons have been effected, hence, prayed for quashing and setting aside the order dated 04.11.2024 passed by the learned Magistrate and to remand the Respondent/ Accused persons in police custody.

7. To buttress this submission, the learned counsel appearing for the Petitioner relied on the case of Central Bureau of Investigation Vs. Vikas Mishra, AIR 2023 SC 1808, wherein para Nos. 7.1 and 8 are as under:

> "7.1. It is true that in the case of Anupam J. Kulkarni (supra), this Court observed that there cannot be any police custody beyond 15 days from the date of arrest. In our opinion, the view taken by this Court in the case of Anupam J. Kulkarni (supra) requires re-consideration.

When we put a very pertinent question to Shri Neeraj Kishan Kaul, learned Senior Counsel appearing on behalf of the Respondent-Accused that in a given case it may happen that the learned trial/Special Court refuses to grant the police custody erroneously which as such was prayed within 15 days and/or immediately on the date of arrest and thereafter the order passed by the trial/Special Court is challenged by the investigating agency before the higher Court, namely, Sessions Court or

the High Court and the higher Court reverses the decision of the learned Magistrate refusing to grant the police custody and by that time the period of 15 days is over, what would be position? The learned Senior Counsel is not in a position to answer the court query.

8. Be that as it may, the facts in the present case are very glaring. Despite the fact that on 16.04.2021, the learned Special Judge allowed police custody of the 5 of 12 ((6)) 902WP1905-24 Respondent- Accused for seven days i.e., up to 22.04.2021, the Respondent-Accused got himself admitted in the hospital during the period of police custody, i.e., on 18.04.2021 and obtained interim bail on 21.04.2021 which came to be extended till 08.12.2021 when his interim ball came to be cancelled by the learned Special Judge by observing that the Accused has misused the liberty shown to him and during the interim bail he has not cooperated with the investigating agency. At the cost of repetition, it is observed that initial order of grant of seven days police custody attained finality. However, due to the aforesaid reasons of having got the Accused himself hospitalised on 18.04.2021 and thereafter obtaining the interim bail on 21.04.2021, the CBI could not interrogate the Accused in the police custody though having a valid order in its favour. Thus, the Respondent-Accused has successfully avoided the full operation of the order of police custody granted by the learned Special Judge. No Accused can be permitted to play with the investigation and/or the court's process. No Accused can be permitted to frustrate the judicial process by his conduct. It cannot be disputed that the right of custodial interrogation/investigation is also a very important right in favour of the investigating} agency to unearth the truth, which the Accused has purposely and successfully tried to frustrate. Therefore, by not permitting the CBI to have the police custody interrogation for the remainder period of seven days, it will be giving a premium to an Accused who has been successful in frustrating the judicial process."

8. Per contra, the Respondent Nos.1 to 4 filed their reply and strongly resisted the petition. The learned counsel appearing for the Respondents canvassed that, Manoj Gopaldas Taneja, the present Respondent No.1 lodged a report on 03.11.2024 alleging that, the 6 of 12 ((7)) 902WP1905-24 accused persons, namely, (1) Manjit Ashok Gabda, (2) Ravi Suresh Motwani, (3) Pankaj Jiseja and (4) Ishan Ashok Gabda have set on fire two motor cycles of complainant, therefore, Crime No. 512 of 2024 registered against them for the offence punishable under Sections 326(f), 109, 324(4), 3(5) of Bharitya Nyaya Sanhita, 2023. However, counter FIR registered against Ishan, who beat Mahak with brick, Manjit who beat Mohit with brick on head and Pankaj who assaulted Jitendra with knife. The injured Respondent Nos.2 Mahak and Respondent No. Mohit are medically treated in the hospital.

9. The learned counsel for the Respondents further submitted that, the Petitioner has filed present petition after lapse of 15 days from the date of arrest of the Respondents and the learned Magistrate remanded the Respondents in MCR by refusing the PCR. Therefore, after lapse of 15 days from the date of arrest, the Respondents can not be remanded in PCR, hence, prayed for dismissal of the Petition.

10. The learned counsel appearing for the Respondent Nos.1 to 4 canvassed that the right given to the informant is very limited and without seeking permission to assist the prosecution under Section 338 of Criminal Procedure Code, the informant de facto complainant has no right to participate in

the trial. The trial commenced from framing of charge. Therefore, the Petitioner/Informant has no right to challenge the 7 of 12 ((8)) 902WP1905-24 order or remanding the Respondents/ Accused in MCR.

11. The learned counsel for the Respondents placed reliance on the case of Ambarish Patnigere Vs. State of Maharashtra, 2010 ALL MR (Cri) 2775, wherein, it has been held that:

> "The learned Judge of this Court in R. Shakuntala, finally came to conclusion that an order rejecting application for remand of the accused to judicial custody is a final order and not an interlocutory order. This will be applicable with equal force to the refusal or request for police custody also. As such, the order passed by the Magistrate rejecting request for police custody cannot be treated as interlocutory order because the police cannot repeat and make applications again and again for police custody after the application for police custody had been rejected once and particularly in view of the limitation under Sec. 167, Cr.P.C. that the police custody may be granted only during the first 15 days after the arrest or detention and not thereafter. If such application for police custody is rejected, that order becomes final and the Investigating Officer is permanently deprived of seeking police custody of that accused for the purpose of further investigation, discovery, etc., even though the offence may be very serious."

12. It further relied on the case of Tukaram Vs. State of Bihar, AIR 1966 SC 911, wherein, it has been held that:

> "Criminal law is not to be used as an instrument of wrecking private vengeance by aggrieved party against a person who, according to private party, had caused injury to him. Barring few exceptions in criminal matters, the party who is treated as 8 of 12 ((9)) 902WP1905-24 aggrieved, is the State, which is the custodian of social interests of community is allowed."

13. In case in hand, it prima facie appears that, on 03.11.2024 at about 10.49 hours a Crime No.513 of 2024 has been registered with Dhule city Police Station against the present Respondents for the offences punishable under Sections 74, 118(1), 189(2), 191(1), 191(2), 190, 352 of Bhartiya Nyaya Sanhita, 2023 and Section 37(1)(3) and 135 of the Maharashtra Police Act.

14. It is matter of record that the Investigating Officer arrested the Respondent/Accused persons on 03.11.2024 and they were produced before the Chief Judicial Magistrate, Dhule on the next day i.e. on 04.11.2024. On production of the Respondents/accused, the Investigating Officer submitted an application seeking remand of the Respondent/ Accused in police custody for recovery of knife and sticks used while committing the offence. The Respondents avoided to give answer about recovery of knife and stick. However, the learned Judicial Magistrate passed an order dated 04.11.2024 and remanded the Respondents/ accused to MCR till 16.11.2024 holding that there is a counter case and there is no question of recovery.

15. No doubt, the Petitioner/Informant questioned the legality and validity of order of remand to MCR in Criminal Revision Application 9 of 12 ((10)) 902WP1905-24 No.74 of 2024. However, on 15.11.2024, learned Revisional Court passed the impugned order holding that the Revision is not maintainable against the order of sending the accused in MCR.

16. Sub-Section 2 of Section 187 of Bhartiya Nyay Sanhita, 2023 provides as under;

> "The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub- Section (3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction."

17. Considering the provisions of Section 187(2) of Bharatiya Nyaya Sanhita, the accused cannot be remanded in PCR after a lapse of 15 days period from the date of arrest of the accused. In the case of The Public Prosecutor, High Court of A.P., Hyderabad Vs. J. C. Narayana Reddy and Another, 1996 Cri. L.J. 462, it is held that, the Magistrate can authorise the detention of the accused either in police custody or judicial custody from time to time but the total period of such detention cannot 10 of 12 ((11)) 902WP1905-24 be exceeded more than 15 days. In the case of Ambarish Patnigere cited (supra), it is held that rejecting request for police custody cannot be treated as an interlocutory order and the police custody may be granted only during first 15 days after the arrest or the detention of the accused under Section 167 of Criminal Procedure Code which is pari materia with Section 187(2) of Bhartiya Nyaya Sanhita, 2023.

18. In the case in hand it appears that, on 03.11.2024, Crime No.513 of 2024 was registered against the present Respondents and on the same day, the present accused persons came to be arrested. Thereafter, on 04.11.2024, the Respondents/ Accused were produced before the Chief Judicial Magistrate, Dhule. The Investigating Officer submitted an application with prayer for remand of Respondents/ accused to the police custody for recovery of weapon knife and sticks, however, said prayer came to be turned down only on the ground that there are two counter F.I.Rs., and there is no question for recovery and no need of custodial interrogation.

19. It is settled principal of law that after a lapse of 15 days from the date of arrest, the accused cannot be remanded in police custody to effect recovery under Section 187(2) of the Bhartiya Nyaya Sanhita, 2023. Nonetheless, the informant de facto complainant is having no right to challenge the order of remand of the accused in 11 of 12 ((12)) 902WP1905-24 Magisterial custody, therefore, I do not find any bona fide and substantial reasons to interfere with the impugned order. Hence, the Writ Petition is dismissed. Accordingly, the Rule is discharged.

[Y. G. KHOBRAGADE, J.] HRJadhav 12 of 12