



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.17029 OF 2024

Sachin Mahipati Nimbalkar
Age: about 35 years, Occu: R/o.
Saudapur, Tal: Karad, Dist:
Satara,
At present Kolhapur Central
Prison, Kolhapur. } Petitioner

Versus

The State of Maharashtra
Through Karad City Police
Station,
Tal: Karad, Dist: Satara
(C.R. No.1191/2023) } Respondent

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Mr. Suyash N. Khose a/w Mr. Vaibhav Kulkarni, Mr. Mangesh
Kusurkar and Mr. Siddharth Sutaria, for the Petitioner.

Ms S. S. Kaushik, APP, for the Respondent – State.

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**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 23rd OCTOBER, 2024**

Order : (Per Manjusha Deshpande, J.):-

1. The petitioner is seeking a declaration that his arrest in relation to FIR No.1191 of 2023 dated 31.10.2023, registered at Karad City Police Station, Satara is illegal and in gross violation of the fundamental rights guaranteed to him under Article 21 and 22 of the Constitution of India. He is further seeking a declaration that the consequential remand order

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dated 01.11.2023 and all the subsequent remand orders passed by the learned J.M.F.C., Karad, are null and void and are in violation of fundamental rights guaranteed to him under the Constitution of India.

2. The petitioner has been arraigned as an accused in C.R. No. 1191 of 2023, for offence punishable under Sections 302, 364, 324, 323, 143, 147, 148, 149, 504 and 506 of the Indian Penal Code. Though initially he was not named as an accused, but during the course of investigation, name of the petitioner came to be added as an accused. He was arrested on 01.11.2023 at 12:41 p.m. and was produced before the J.M.F.C, Karad on the very day. He was remanded to police custody till 06.11.2023, and thereafter his police custody remand was extended upto 07.11.2023. Investigating Agency has filed charge-sheet in the present matter.

A complaint was lodged by one Pramod Vishwas Pawar alleging that, his brother Pravin had an affair with the daughter of one Balasaheb Pawar. On 30.10.2023, one Shekhar Pawar and four other unknown persons came inquiring the whereabouts of the brother of the complainant Pravin and when the complainant informed that he was not aware about his brother's whereabouts, Shekhar assaulted the complainant and made the complainant sit in a Bolero car. It is further alleged that, there was another four wheeler, wherein the father of the complainant and one Janardhan Gurav had sat alongwith two other persons. The accused persons assaulted Janardhan, the complainant and his father with sticks, fists and blows and due to the said assault, Janardhan has expired.

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Therefore the FIR was lodged in Karad City Police Station on 31.10.2023.

3. The petitioner had filed the regular Bail Application, which is pending before the Additional Sessions Judge, Karad. The petitioner is challenging his arrest in the present Writ Petition on the ground that, the grounds of arrest were not informed to him in writing and as such his arrest is in gross violation of the constitutional mandate under Article 22(1) of the Constitution of India, and there is total non-compliance of Section 50 of the Code of Criminal Procedure, 1973.

4. It is the contention of the petitioner that, mere passing of successive remand orders do not validate initial remand, if such arrest was not in conformity with law. The grounds of arrest ought to have been furnished to the petitioner before producing him before the learned J.M.F.C., Karad, seeking custody and subsequent remand. The continuing custody of the petitioner is grossly illegal and a nullity, since the initial arrest itself is in violation of constitutional mandate and is in flagrant violation of statutory rights of the petitioner.

The learned counsel for the petitioner has relied on the judgment delivered by the Hon'ble Apex Court in case of *Pankaj Bansal V/s. Union of India and Ors.*¹ and the other various judgments of this Court as well as the Hon'ble Apex Court in support of his contention.

1 2023 SCC OnLine 1244.

5. The learned APP representing the State has relied on the affidavit affirmed by Mr. Rajesh Prakash Mali, the Assistant Police Inspector, attached to Karad City Police Station, Satara, wherein he has candidly stated that, during the course of investigation, the petitioner was arrested on 01.11.2023 at 12:41 hours, since his name was revealed in the investigation. He was informed about the grounds of his arrest and the said fact has also been mentioned in the station diary dated 01.11.2023, maintained in Karad City Police Station.

It is further stated that, the concerned API has followed guidelines of the Hon'ble Apex Court in case of *D. K. Basu V/s. State of West Bengal*² by informing the wife of the petitioner about arrest of the petitioner on her mobile phone. Arrest panchanama to that effect was made and the same was signed by the panchas. After conducting necessary medical examination the petitioner was produced within 24 hours before the Court of J.M.F.C, Karad, alongwith the copy of remand report. The petitioner was given the copy of remand report, which has been acknowledged by him by putting his signature, therefore there is no violation of his fundamental rights as claimed by the petitioner. According to the API, before the arrest of the petitioner, reasons for arrest and his legal rights have been explained to the petitioner in presence of panchas and, accordingly, the arrest form of the petitioner was duly filled up. Therefore according to the API, the guidelines of the Hon'ble Apex Court in case of *D. K. Basu (supra)* have been complied with.

It is further stated in the affidavit that, informing the

2 (1997) 1 SCC 416

particulars of offence to the accused is the statutory as well as the constitutional requirement, the same is complied by way of filing remand application before the court, a copy of which has also been served on the accused and his lawyer.

6. We have heard the learned counsel for the petitioner as well as the learned APP for the State and after going through the reply affidavit and the documents annexed with the reply affidavit, we do not find any grounds of arrest being communicated to the petitioner. From the arrest panchanama it is evident that, information is given to his wife on the cell number provided by him, apart from which, there are no grounds of arrest mentioned in the arrest surrender form.

So far as ground being communicated through the remand application is concerned, the law in this regard is now well settled. The Hon'ble Apex Court in case of ***Prabir Purkayastha V/s State (NCT of Delhi)***³ has elaborately considered this issue and in para 49 of the said decision, the distinction between the “reasons of arrest” and “grounds of arrest” have been culled out, which reads thus :

“49. It may be reiterated at the cost of repetition that there is a significant difference in the phrase ‘reasons for arrest’ and ‘grounds of arrest’. The ‘reasons for arrest’ as indicated in the arrest memo are purely formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person

3 2024 SCC OnLine SC 934

acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Investigating Officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the 'grounds of arrest' would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the 'grounds of arrest' would invariably be personal to the accused and cannot be equated with the 'reasons of arrest' which are general in nature."

7. It is the requirement of Section 50 of the Cr.P.C. that an accused, who is being arrested without warrant to be forthwith communicated about the full particulars of the offence for which he is arrested or the other grounds for such arrest. The petitioner has alleged non-compliance of Section 50 of the Cr.P.C. as also Article 22(1) of the Constitution of India, by relying upon law laid down by the Apex Court in this regard. Therefore, it is a specific contention of the petitioner that, there is a violation of his constitutional as well as statutory rights.

8. After considering the submissions as well as the documents produced on record, we do not find grounds of arrest being communicated to the petitioner as contemplated by Section 50 of the Cr.P.C. and explained by this Court as well as the Hon'ble Apex Court in its various judicial pronouncements. We are satisfied that there is a flagrant violation of Section 50 of the Cr.P.C. as well as Article 22(1) of

the constitution of India, and since the grounds of arrest are not communicated to the petitioner, making his arrest illegal.

Resultantly, the Writ Petition is allowed and we declare that the arrest of the petitioner in relation to FIR No. 1191 of 2023 dated 31.10.2023 is illegal and in gross violation of fundamental rights of the petitioner and the consequential remand order dated 01.11.2023 passed by the J.M.F.C., Karad as well as the subsequent remand orders are null and void.

In view of the declaration, the petitioner deserves to be released forthwith from the custody on furnishing bail bond to the satisfaction of the trial Court. The Writ Petition is disposed off in the above terms.

We must clarify that the observations made in the present Writ Petition would not effect the merits of the case, but are restricted to the claim raised by the petitioner about the illegality of the arrest.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)