



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

WRIT PETITION NO. 4927 OF 2010

1. Adv. Yogeshwar Madhukarrao Kawade,
Aged About: 33 Years, Occ: Practicing
Lawyer.
2. Shri Avinash Vithalrao Date
(Ex serviceman)
Aged About: 50 Years, Occ:
Both R/o At Post Hirpur,
Tah: Dhamangaon (Railway)
District: Amravati.

PETITIONERS

Versus

1. The State of Maharashtra,
Thr. it's Secretary Department of
Home, Mantralaya, Mumbai- 32.
2. The State of Maharashtra,
Thr. it's Secretary Department of
General Administration, Mantralaya,
Mumbai- 32.
3. The Director General of Police,
Mumbai.
4. The Superintendent of Police Amravati
Rural Division, Amravati.
5. Shri M.M. Dhande,
Assistant Police Inspector
Police Station Talegaon
District: Amravati.

6. Naresh (B.No. 1990)

7. Deepak Gale (B.No.1197)

(Respondent Nos.6 & 7 Both Police
Constable attached to Police Station
Talegaon, District: Amravati.

RESPONDENTS

Mr. Shriniwas Deshpande, Advocate for the Petitioners.
Mr. S.S. Hulke, AGP for the Respondent Nos. 1 to 4/State.
Ms. Aastha Sharma, Advocate h/f Mr. P.R. Agrawal, Advocate for
the Respondent Nos. 6 & 7.

CORAM : URMILA JOSHI PHALKE AND
NIVEDITA P. MEHTA, JJ.

RESERVED ON : 16th APRIL, 2026.

PRONOUNCED ON : 21st APRIL, 2026.

ORAL JUDGMENT :- (PER : URMILA JOSHI PHALKE, J.)

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally
by the consent of learned Counsel appearing for the respective
parties.

3. The Petitioner No.1 is a practicing Lawyer and the
petitioner No.2 is an ex-serviceman prefers this Petition for
issuing the writ of mandamus seeking action against the

Respondent Nos. 5 to 7 under Section 25 of the Bombay Police Act, 1951 and to impose major punishment as well as for compensation from the Respondent Nos. 5 to 7 for inhuman actions on their parts.

4. As per the contentions of the Petitioners, the Petitioner No.1 is a practicing Lawyer at Chandur Bajar, District Amravati, whereas Petitioner No.2 is an ex-serviceman served for the Nation. It is contended by the Petitioners that, the Petitioner No.2 had been to the Police Station to lodge a complaint against one Ravish Narayanrao Bire and Pankaj Bahadure. The complaint lodged by the Petitioners was treated as non-cognizable. It was alleged by the Petitioner No.2 that, these two persons caused damage to his vehicle and thereby committed an offence punishable under Sections 427 and 506 of the Indian Penal Code (for short "IPC"). Entries to that effect were made vide Sana Entry No.36/2010 on 26.08.2010. The Petitioner No.1 being a Lawyer accompanied Petitioner No.2. Similarly, said Ravish Bire has also lodged report against the present Petitioners alleging that he was manhandled by them and accordingly NC report was filed vide Sana Entry No.37/2010 dated 26.08.2010 under Sections 323, 504 and 506

of IPC. It is contended by the petitioners that, the preventive action under Section 151 of the Code of Criminal Procedure (for short "Cr.PC.") was taken against them and they were unnecessarily detained in the Police Station after cross complaint is filed by Ravish Bire after midnight.

5. It is further alleged that, they were ordered to remove all their clothes except the undergarments. They were also taken to Tahsildar's office in a handcuff position from Police Station Talegaon to Deogaon Choufuli and from Deogaon Choufuli to Dhamangaon Railway Tahsil Office in a State Transport Bus. All the time they were handcuffed within the public view. At Dhamangaon Railway Tahsil Office they were produced before the Tahsildar. The Tahsildar has taken the cognizance of this fact that they were produced in a handcuff position and immediately directed the Respondent Nos.5 to 7 to remove the handcuffs and also granted bail to the Petitioners. This act of the Respondent Nos. 5 to 7 clearly shows that, there was no legal justification of their part firstly to confine the Petitioners in a non-cognizable offence. There was no legal justification regarding the handcuffing of the Petitioners as they are not the habitual offenders or the hardened criminals.

6. The Petitioner No.2 is an ex-serviceman having retired from Indian Air Force on 31.08.1993. The Notification dated 28.01.1987 issued by the Government regarding the treatment which requires to be given to the ex-serviceman is also not followed by the Respondent Nos. 5 to 7. For all above these reasons, stern action is required to be taken against the present Respondents as well as the Petitioners are entitled for compensation for the said inhuman treatment at the hands of the Respondent Nos. 5 to 7.

7. This Petition though strongly opposed by the Respondent No.4 i.e. Superintendent of Police, Amravati Rural Division, however, he submitted that necessary action is already taken against the Respondent Nos. 5 to 7 in view of enquiry report submitted by the Sub Divisional Police Officer, Chandur Railway, District Amravati and departmental action is already taken against them. The additional affidavit by the Respondent No.4 shows that, Sub Divisional Police Officer, Morshi has been directed to expeditiously complete the enquiry.

8. The reply on behalf of the Respondent No.5 shows that the complaint filed by the Petitioner No.2 as well as one

Ravish Bire both are considered to be non-cognizable. At the same time, Ravish Bire had apprehended and also informed the Respondent No.5 that there is every likelihood that the Petitioners may attack on him. Mob of 15 to 20 persons was gathered and for taking preventive measures, the Respondent No.5 has detained both the Petitioners as well as Ravish Bire. It is further submitted by him that, the allegations regarding the Petitioners were asked to remove all the clothes except the undergarments were false but it was made only to gain sympathy of this Court. It is further contended that, as far as the allegations regarding taking all the Petitioners in handcuff position, which is the mistake committed by the Respondent Nos. 6 and 7. He has only directed the Respondent Nos. 6 and 7 to take the Petitioners in Tahsildar Court. Despite the specific directions, the Respondent Nos. 6 and 7 have taken them in a handcuff position, and therefore, they are responsible for the act of taking the Petitioners in a handcuff position.

9. The reply filed by the Respondent Nos. 6 and 7 shows that, they acted in view of direction given by them by the Respondent No.5, and therefore, they are not responsible for any action as they have only followed the direction of the

superior. In view of that, the Petition deserves to be dismissed against them.

10. Heard Mr. Deshpande, learned Counsel for the Petitioners, who submitted that the Petitioners who are the respectable persons and they are not the hardened criminals, there was no necessity for them to take the Petitioners in a handcuffing position. Moreover, there is atrocity on the Petitioners by asking them to remove the clothes except the undergarments, which is a humiliating treatment. He invited our attention towards the Resolution which is passed by the Chandur Railway Bar Association as well as the Government Notification dated 28.01.1987. He submitted that, Chandur Railway Bar Association has taken the cognizance of the incident that the Petitioner No.1 was treated inhumanly and was taken to the Tahsil Office in a handcuffing position i.e. also in a non-cognizable offence, the action of the Police is condemnable, and therefore, they also requested to take the action. Similarly, the Notification shows that, the ex-servicemen who are sacrificing their lives for the Nation should be treated with respect by all the public officers. The said Government Notification is also not respected by the Respondent Nos. 5 to 7.

He submitted that, proper procedure is also not followed by the Respondent Nos. 5 to 7 as far as non-cognizable offence is concerned. For all above these grounds, the Petition deserves to be allowed.

11. In support of his contention, he placed reliance on *Rudul Sah Vs. State of Bihar & Anr., (1983) 4 SCC 141; D.K. Basu Vs. State of W.B., 1997 CRI.L.J. 743; Hardeep Singh Anand Vs. State of M.P. & Ors., MANU/MP/0280/2008 & Citizens for Democracy, Thr. its President Vs. State of Assam & Ors., (1995) 3 SCC 743.*

12. He submitted that Article 21 of the Constitution of India is violated by the present Respondent Nos. 5 to 7 in view of the above judgments.

13. *Per contra*, Mr. Hulke, learned AGP submitted that, departmental enquiry is already initiated. The enquiry report shows that the Respondent Nos. 5 to 7 were held guilty for the misconduct and accordingly increment of Respondent No.5 was withheld for one year and increment of Respondent Nos. 6 and 7 was withheld for 2 and 3 years. Thus, the action is already taken against the present Respondent Nos. 5 to 7 in view of the

enquiry report. He submitted that, the State is not responsible to pay compensation for the misconduct of the Respondent Nos. 5 to 7, at the most, if the Court comes to the conclusion that the Petitioners are entitled for compensation, it should be given from the pocket of Respondent Nos. 5 to 7.

14. In support of his contention, he placed reliance on the similar judgment of *Rudul Sah Vs. State of Bihar & Anr., (1983) 4 SCC 141 & State of Maharashtra & Ors. Vs. Ravikant S. Patil, (1991) 2 SCC 373.*

15. After hearing both the sides and on perusal of the entire documents on record, there is no dispute that the Petitioners as well as one Ravish Bire has lodged the report against each other which are registered as non-cognizable offence. Thereafter preventive action was taken against both of them. The record further shows that, the interim bond was executed by the Petitioners as well as said Ravish Bire. Considering the grievance made by the Petitioners which was addressed to the Superintendent of Police, Amravati Rural, the Superintendent of Police, Amravati Rural/Respondent No.4 directed to verify the genuineness of the allegations.

16. The reply filed by the Respondent No.4 shows that, Sub Divisional Police Officer, Chandur Railway, District Amravati has submitted his enquiry report on 23.11.2010. In view of the said enquiry report, the departmental enquiry was initiated against the present Respondent Nos. 5 to 7 and Sub Divisional Police officer, Morshi has been directed to expeditiously complete the enquiry. The enquiry report is before the Court. During the enquiry, the Inquiry Officer has recorded the statements of various Police persons and it revealed that on the direction of the Respondent No.5, Respondent Nos. 6 and 7 detained the Petitioners and thereafter taken them to Dhamangaon Railway Tahsil Office in a handcuff position. The enquiry report shows that, the present Petitioners were taken to the Police Station thereafter they were detained at Police Station and preventive action under Section 151 of Cr.P.C., was taken against them. The said preventive action was also taken on the direction of the Respondent No.5.

17. The statement of Police Constable Naresh B.No. 1990 shows that, the Respondent No.5 came at Police Station and directed the Respondent Nos. 6 and 7 to take these persons in a handcuff position. Thus, the enquiry report shows that,

though the Respondent No.5 was not present at the relevant time at the Police Station but at his direction the Respondent Nos. 6 and 7 has taken the Petitioners in a handcuff position and thereby they are held guilty for the misconduct.

18. At this stage the observation of the Hon'ble Apex Court in the case of ***Rudul Sah*** (Supra) is relevant, wherein it is held that:

“Although Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, such as money claims, the Supreme Court in exercise of its jurisdiction under this Article can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The petitioner can be relegated to the ordinary remedy of a suit if his claim to compensation was factually con-troversial, in the sense that a civil court may or may not have upheld his claim. But where the court has already found, as in the present case, that the petitioner’s prolonged detention in prison after his acquittal was wholly unjustified and illegal, there can be no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of the Supreme Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly Violated. Article 21 will be denuded of its significant content if the power of the Supreme Court were limited to passing orders of release from illegal detention. The only effective method open to the judiciary to prevent violation of that right and secure due compliance with the mandate of Article 21, is to mulct its violators in the payment of

monetary compensation. The right to compensation is thus some palliative for the unlawful acts of instrumentalities of the State. Therefore, the State must repair the damage done by the officers to the petitioner's rights. It may have recourse against these officers."

19. Admittedly, Article 21 which guarantees the right to life and liberty and due compliance of the same is the mandate of Article 21. The violation of that right requires to be prevented.

20. Some punitive provisions are contained in IPC which seek to punish violation of right to life. Section 220 of IPC provides for punishment to an officer or authority who detains or keeps a person in confinement with a corrupt or malicious motive. Sections 330 and 331 of IPC provides for punishment of those who inflict injury of grievous hurt on a person to extort confession or information in regard to commission of an offence. Illustration (a) and (b) to Section 330 make a police officer guilty of torturing a person in order to induce him to confess the commission of a crime or to induce him to point out places where stolen property is deposited. These statutory provisions are, however, inadequate to repair the wrong done to the citizen. Prosecution of the offender is an obligation of the

State in case of every crime but the victim of crime needs to be compensated monetarily also. Where there is infringement of the fundamental right and the same is established, the Court cannot be stopped by giving a mere declaration. It must proceed further and give compensatory relief, nor by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of a public duty by the State for not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.

21. In the decision of *D.K. Basu* (supra), wherein the Hon'ble Apex Court issued the guidelines as a preventive measure to the Police Officers regarding the arrest of the citizens.

22. The Hon'ble Apex Court has observed in para 44, which reads as under:

“44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages of tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established

infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.”

23. While summing up, the Hon’ble Apex Court further observes in para 55, which reads as under:

“55. Thus, to sum up, it is now a well accepted proposition in most of the jurisdiction, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is nor available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the Criminal Courts in which the offender is prosecuted, which the State, in law, is duly bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket

formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.”

24. As far as handcuffing is concerned, admittedly, there is no evidence on record to show that the present Petitioners were the habitual offenders or the hardened criminals. Therefore, the justification of the State that as there was gathering of the people, and therefore, the said action was taken by the Respondent Nos. 5 to 7, is not justifiable one.

25. This aspect was also considered by the Hon'ble Apex Court in the case of *Citizens for Democracy* (supra) and observed that, the law declared in Prem Shankar Shukla's case and Sunil Batra's case and the directions issued by the Supreme Court are binding on all concerned and any violation or circumvention shall attract the provisions of the Contempt of Courts Act apart from other penal consequences under law. Judicial notice is taken of the fact that the police and the jail authorities are even now using handcuffs and other fetters

indiscriminately and without any justification. This Court has categorically held that the relevant considerations for putting a prisoner in fetters are the character, antecedents and propensities of the prisoner. The peculiar and special characteristics of each individual prisoner have to be taken into consideration. The nature or length of sentence or the number of convictions or the gruesome character of the crime the prisoner is alleged to have committed are not by themselves relevant consideration.

26. The Hon'ble Apex Court further observed that, this Court in *Prem Shankar Shukla Vs. Delhi Admn. (1980) 3 SCC 526 and Sunil Batra Vs. Delhi Admn. (1978) 4 SCC 494*, elaborately dealt with the extreme situation when the police and jail authorities can resort to handcuffing of the prisoners inside and outside the jail. It is further observed that, it is a pity that the authorities have miserably failed to follow the law laid down by this Court in the matter of handcuffing of prisoners. The directions given by this Court are not being followed and are being treated as a pious declaration. We take judicial notice of the fact that the police and the jail authorities are even now using handcuffs and other fetters indiscriminately and without

any justification. It has, therefore, become necessary to give binding directions and enforce the same meticulously.

27. In view of the above observations, the Hon'ble Apex Court further laid down the guidelines in paras 16 and 17, which reads as under:

“16. We declare, direct and lay down as a rule that handcuffs or other fetters shall not be forced on a prisoner - convicted or under-trial-while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back. The police and the jail authorities, on their own, shall have no authority to direct the hand-cuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back.

17. Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/desperate and the finding that no other practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner.”

28. In view of the above guidelines, admittedly, the act of the Respondent Nos. 5 to 7 is contrary to the same which is established during the departmental enquiry against them.

29. Here the Respondent Nos. 5 to 7 are holding public office and abused their position.

30. This aspect was considered by the Hon'ble Apex Court in the case of *Parvat Chandra Mohanty Vs. State of Odisha, (2021) 3 SCC 529*, wherein it is observed by the Hon'ble Apex Court that in event people holding public office abuse their position, it becomes a matter of great public concern. When the police is violator of the law whose primary responsibility is to protect the law, the punishment for such violation has to be proportionately stringent so as to have effective deterrent effect and instill confidence in the society. The primary responsibility to protect and uphold law, thereby mandating the punishment for such violation to be proportionately stringent so as to have effective deterrent effect and instill confidence in the society.

31. Similarly, in the present case, the Respondent Nos. 5 to 7 are the Police Officer and Police Constables whose primary responsibility was to protect and uphold the law, but they were not only the violators of the law but they have also violated the guidelines issued by the Hon'ble Apex Court. It may not be out of context to remind that the motto of Maharashtra State Police is "Sadrakshnaya Khalanighrahanaya" (Sanskrit : "To protect good and to punish evil"), which needs to be respected. Those,

who are called upon to administer the criminal law, must bear, in mind, that they have a duty not merely to the individual accused before them, but also to the State and to the community at large. Such incidents involving Police usually tend to deplete the confidence in our criminal justice system much more than those incidents involving private individuals. We must additionally consider this aspect while considering the present Petition.

32. Thus, the Respondent Nos. 5 to 7 namely Shri M.M. Dhande Assistant Police Inspector, Police Constable Naresh (B.No. 1990) and Police Constable Deepak Gale (B.No.1197) has subjected the present Petitioners to an unwarranted humiliation and indignity which cannot be done to any citizen of India and accordingly they are entitled for the compensation.

33. The only question remains whether they are to be held liable to pay compensation in personal capacity or State is responsible to pay the said compensation.

34. Learned Counsel for the Petitioners, also placed reliance on the decision of State of *State of Maharashtra & Ors. Vs. Ravikant S. Patil* (supra), wherein the similar issue was

involved and the High Court has granted compensation regarding the handcuffing. The Hon'ble Apex Court held that, the handcuffing is an act against all norms of decency and amounts to violation of principles underlying Article 21. It is further observed by the Hon'ble Apex Court that, "we do not propose to interfere with the order directing the payment of compensation. But we think that Shri Prakash Chavan, Inspector of Police, appellant 2 herein, cannot be made personally liable. He has acted only as an official and even assuming that he has exceeded his limits and thus erred in taking the undertrial prisoners handcuffed, still we do not think that he can be made personally liable. In ***Rudul Sah*** (supra) this Court directed the State to pay compensation to the person illegally detained. The High Court also having noted this decision observed that the court can order payment of compensation either by the State or persons acting on behalf of the State. Having so observed, the High Court, however, held Shri Prakash Chavan, Inspector of Police personally liable and directed him to pay the compensation. We are of the view that in the instant case also a similar order as one passed in ***Rudul Sah*** (supra), will meet the ends of justice. Then the High Court has also directed that an

entry should be made in his service record to the effect that he was guilty of violation of fundamental right of an undertrial prisoner. So far this direction is concerned, it is submitted that such an adverse entry cannot straightway be made without giving the Inspector of Police, appellant 2 herein, an opportunity of being heard.”

35. In the light of the above observations, and herein the present case also the Respondent Nos. 5 to 7 acted as an official and they have exceeded their limits and thus committed an error in taking the undertrial prisoners handcuffed. Here also the learned Counsel for the Petitioners as well as learned AGP placed reliance on the judgment of *Rudul Sah* (supra), wherein the compensation to the persons was granted as they were illegally detained. Thus, in view of the observations of the Hon'ble Apex Court in the case of *State of Maharashtra & Ors. Vs. Ravikant S. Patil* (supra), here in the present case also, the State can be directed to pay the compensation to the present Petitioners for the act of the Respondent Nos. 5 to 7 as they were held guilty of violation of the fundamental rights of the present Petitioners. In view of that, we proceed to pass the following order.

ORDER

- i.** The Writ Petition is **partly allowed**.
- ii.** The compensation of Rs. 50,000/- (Rs. Fifty Thousand Only) each shall be paid by the Respondent No.1 to the present Petitioners within a period of eight weeks from today.
- iii.** As far as the other prayer of the Petitioners is concerned, the departmental enquiry against the Respondent Nos. 5 to 7 is already held and the punishment for their misconduct is already imposed, and therefore, the prayer of the Petitioners in prayer clause (i), is hereby rejected.

36. Pending application/s, if any, shall stand disposed of accordingly.

(NIVEDITA P. MEHTA, J.)

(URMILA JOSHI PHALKE, J.)