



***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION (STAMP) NO.7551 OF 2024***

Bhairaram Saraswat ...Petitioner
Versus
State of Maharashtra and Ors. ...Respondents

Mr. Mudit Jain a/w Mr. Aman Kacheria, Mr. Rahul Agarwal, Ms. Jasmin Purani and Mr. Sajid Sayed i/b Agarwal & Dhanuka Legal, for the Petitioner.

Mr. H. S. Venegavkar, P.P. a/w Ms. P. P. Shinde, A.P.P for the Respondent–State.

***CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.
DATE : 5th APRIL 2024***

P.C. :

1. At the outset, learned counsel for the petitioner seeks leave to amend the prayer clause. Leave granted. Amendment to be carried out during the course of the day and amended copy be served on the office of the Public Prosecutor/Public Prosecutor.

2. By this petition, the petitioner has impugned his illegal arrest by the police; non-compliance of Section 41A of the Code of Criminal Procedure ('Cr.PC') and several other grounds have been raised in the aforesaid petition.

3. The grievance of the learned counsel for the petitioner is that the petitioner was not served with the mandatory Section 41A notice as required considering the offence was one under Section 420 r/w 34 of the Indian Penal Code, registered with the L.T. Marg Police Station, Mumbai, vide C.R. No.232 of 2024. According to the petitioner, the said FIR was registered on 11th March 2024. Admittedly, the petitioner was not named in the FIR. It is the petitioner's case that on 19th March 2024, two to three persons, who were later identified to be police officers including respondent No.2 approached the petitioner in his shop at Ahmedabad in plain clothes and picked-up the petitioner. Learned counsel relied on the CCTV footage screen shots annexed to the petition, which are at Exhibit – "D" (colly) of the petition. It is submitted that the said persons who were police detained the petitioner from his place of work and did not serve him a notice under Section 41A Cr.PC. This, according to the petitioner was in clear violation of the mandate of the Apex Court in the case of *Satender Kumar Antil v/s Central Bureau of Investigation*

*and Another*¹ and *Arnesh Kumar v/s State of Bihar and Another*².

Learned counsel further submits that the petitioner was picked-up and brought to Mumbai, without seeking any transit remand, as required under Section 57 Cr.PC. In this context, learned counsel for the petitioner relied on the judgment of the Apex Court in the case of *Priya Indoria v/s State of Karnataka and Others. Etc.*³, in particular, para 34 of the said judgment.

4. Learned counsel for the petitioner submits that Section 41A notice was subsequently prepared by the police after the petitioner was brought to Mumbai and the petitioner's signature/thumb impression on the said notice was taken forcibly i.e. on Section 41A notice. He submits that the fact that Section 41A notice is not served on the petitioner, is evident from the CCTV footage i.e. the police were not carrying any papers with them, when they picked-up the petitioner. Learned counsel further submits that no arrest memo was provided to the petitioner, nor the grounds of arrest informed to

1 (2022) 10 SCC 51

2 (2014) 8 SCC 273

3 SLP (Crl) Nos.11423-11426 of 2023 decided on 20.11.2023

the petitioner or his relatives/family members, either orally or in writing, at the time, when the petitioner was forcibly picked-up from Ahmedabad. It is also submitted that the arrest was made by plain clothes police officers with no identity on their person so as to disclose that they were police officers and as such there was clear violation of the judgment of the Apex Court in the case of *D. K. Basu v/s State of West Bengal*⁴.

5. Learned counsel for the petitioner also submits that the petitioner's phone was used by the Investigating Officer for almost 10 days and that the officer would be talking on the petitioner's phone to the petitioner's father and brother. Learned counsel relied on the screen shots of the calls received and audio recording of the conversation between the officer and the petitioner's father and others. He submits that the audio recording will show that money was demanded from the petitioner's father to settle the matter. He further submits that the respondent No.2 even misled the petitioner's lawyer by disclosing that he was in Rajasthan alongwith the petitioner,

4 (1997) 1 SCC 416

whereas the CCTV footage of the police station showed the presence of the petitioner within the premises of the L.T. Marg Police Station. Learned counsel relied on the affidavit filed by the concerned lawyer, which is on page 125 of the petition.

6. Mr. Venegavkar, learned Public Prosecutor, submits that Section 41A notice was served on the petitioner on 19th March 2024 on the day when the police went to Ahmedabad. He states that the petitioner is presently in judicial custody. Learned Public Prosecutor seeks three weeks time to file a detailed affidavit-in-reply/response to the allegations made by the petitioner. The same to be filed in the registry before the next date, with an advance copy to the learned counsel for the petitioner.

7. *Prima facie*, we are doubtful whether Section 41A notice was served on the petitioner and whether the alleged notice served on the petitioner can be said to be a notice under Section 41A, more particularly, when the petitioner was picked-up by the police, straight

away. *Prima facie*, it appears that the police have not complied with the provisions of law and as such there is substance in the allegations made by the petitioner in the aforesaid petition. Custodial torture is also alleged. The allegations as against the police officers are serious and the same need to be responded to by them.

8. *Prima facie*, considering there is violation of the provisions of law, in the peculiar facts, we deem it appropriate to grant interim bail to the petitioner until further orders, on the following terms and conditions:

ORDER

- i) The petitioner be released on interim cash bail in the sum of Rs.25,000/-, for a period of six weeks;
- ii) The petitioner shall within the said period of six weeks, furnish P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

9. In the meantime, Deputy Commissioner of Police, Zone 2, Mumbai, to apply for not only the CDR of the petitioner from the

period 19th March 2024 to 30th March 2024, but even messages/calls made through WhatsApp from the petitioner's mobile.

10. At this stage, learned counsel for the petitioner states that even the CDR of the original accused No.1 be called for, more particularly, since the police were also using the mobile phone of the original accused No.1, when he was in their custody.

11. Accordingly, Deputy Commissioner of Police, Zone 2, Mumbai, to also call for CDR of the mobile phone of the original accused No.1 from the period 18th March 2024 to 30th March 2024, including messages/calls made through WhatsApp.

12. Stand over to 3rd May 2024.

All concerned to act on the authenticated copy of this order.

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.