

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO.**

**OF 2020**

**DISTRICT : MUMBAI**

In the matter under Article 226 of the  
Constitution of India;

AND

In the matter of Section 482 of Code of  
Criminal Procedure.

AND

In the matter of action of the Traffic  
Police, Mumbai imposing fine of Rs.  
500/- on the Petitioner advocate for  
alleged violation of lockdown rules.

And

In the matter of seeking directions to include Advocates legal services as 'Essential services' for the enforcement of fundamental rights of the community and smooth functioning of administration of justice system.

Imran Mohd. Salar Shaikh )  
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 )  
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 )  
 ) ...Petitioner

Versus

1. The State of Maharashtra )  
2. The Chief Secretary, )  
Government of Maharashtra, )  
Mantralaya, Mumbai )

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3. The Commissioner of Police, )  
Crawford Market, Mumbai )
4. The Municipal Commissioner, )  
Municipal Corporation of Greater Mumbai)
5. The Chairman )  
The Bar Council of Maharashtra & Goa )...Respondents

TO,  
THE HON'BLE CHIEF JUSTICE AND THE  
HON'BLE PUISNE JUDGES OF THIS  
HON'BLE HIGH COURT OF JUDICATURE  
AT BOMBAY.

THE HUMBLE PETITION OF  
THE PETITIONER ABOVE NAMED:

MOST RESPECTFULLY SHEWETH:

1. The Petitioner is a citizen of India and thereby protected by the Articles as enshrined in the Constitution of India. The Petitioner is an advocate by profession, practicing at Mumbai subordinate courts since last 2 years with a lawyers chamber. Hereto annexed and marked as EXHIBIT A is the copy of advocate Bar Council ID.

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2. That the Petitioner submits that after the unprecedented outbreak of COVID 19 virus, the lockdown was started by the Government of India across the nation to control and eradication of the pandemic.

3. The Petitioner submits that being a responsible citizen of India, he has participated in the distribution of food, ration and other essential goods to the needy and poor people. At the same time he has also represented under trial prisoners for their release on bail during the lockdown since March 2020. Most of the time police used to stop, he has to convince them about his court dates and his requirement to appear in the court as a lawyer then he was allowed to go.

4. The Petitioner submits that on 29<sup>th</sup> June 2020, he was instructed by advocate Pathan to appear in a bail application filed in case No. 882/PW/2019 pending before the Id. Metropolitan Magistrate's 47<sup>th</sup> court, Esplanade. As such the Petitioner left his residence on his friend Shahbaz Shaikh's motorcycle bearing No. MH-02 CC-3001 from Andheri at 11.00 a.m. for magistrate court at Esplanade, Near CSTM, Mumbai. He was stopped by traffic police at Western Express Highway near Santacruz. The Petitioner has shown his brief/file, advocate ID, to the concerned police constable, but he did not give any heed to him, the Petitioner tried to convince the said constable, regarding his court date and he has to reach there on time otherwise his client will face hardship, his matter may get dismissed, but the concerned constable was not in



mood to listen the Petitioner, constraining the same the said constable charged the Petitioner with a challan of Rs. 500/-, as he was already late for court and he has to reach on time in the court, he left for Esplanade court, upon reaching at about 1.15 p.m., he came to know that the matter is already called out and other parties have left the court premises and he is marked 'absent', then the Petitioner mentioned the matter before the Id. magistrate and pointed out the said incident. Thereafter the Id. magistrate asked the court clerk to furnish certified copies of the Roznama to the Petitioner. Hereto annexed and marked as **EXHIBIT B** is the copy of Challan received issued by traffic police.

5. The Petitioner was on the way to provide his legal services seeking justice for his oldaged, ailing undertrial client and the Petitioner had to face the arbitrariness of the traffic police and embarrassment.

6. In these circumstances, the Petitioner is approaching this Hon'ble Court by preferring the present Petition under Article 226 of the Constitution of India read with section 482 Code of Criminal Procedure seeking directions for exemption of services related to the essential functioning of courts, judicial officers, sheriffs and Legal Practitioners, as 'essential services' during lockdown so that they can provide legal services to the community, on the following amongst other grounds which are not prejudice to one another:-

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- (A) That lawyers are the most important part of the justice delivery system.
- (B) That the Petitioner who was on the way to the court for providing legal services for his oldaged, ailing client, should not have been charged with the challan by the concerned police constable. Hereto annexed and marked as **EXHIBIT C** is the copy of bail application on medical ground.
- (C) That it is pertinent to note that after 19<sup>th</sup> March 2020, due to unprecedented outbreak of COVID 19 virus, the nationwide lockdwon was started by the Government of India for control and eradication of COVID 19 virus. meanwhile essential services as contemplated under the Essential Service Maintenance Act 2017 were continued for smooth functioning of the administration, health system etc. it is important to note that alongwith those services, the subordinate courts were also working as a holiday court for a limited period of time throughout the lockdown so that justice delivery system should not be paralyzed. However the advocates services have not been included in the category of 'Essential services' inspite of that many lawyers all over across the country, went to attend court for delivering their legal services on humanitarian grounds.

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- (D) That the Petitioner is constrained to file the present Petition, so that the lawyers can provide their legal services for effective administration of justice.
- (E) That it is further pertinent to note that during the said lockdown police machinery has also arrested many accused persons, registered FIRs against the offenders, remand courts have been working, the judicial officers, court staff was provided with passes for unhindered travel but the lawyers, who are also part of the same judicial system were not provided with any passes, immunity to travel for the purpose of court work. Being defended upon accusation is a fundamental rights of the accused and the lawyer is a person who can represent and defend the accused. In such circumstance it is seen that legal services are essential services.
- (F) That it is pertinent to note that In South Africa, which is one of the fastest developing democratic country have included legal practitioners as an 'Essential Services' so that justice delivery system and financial system of the country should not be hampered. Hereto annexed and marked as **EXHIBIT D** is the copy of gazette notification issued by the Government of South Africa during lockdown.



- (G) That it is also pertinent to note that upon careful perusal of the definition of Essential Services u/s 2 of Maharashtra Essential Services Maintenance Act 2017 which can be read as ... clause (vi) of Section 2 states as :- *any other service, post, employment or class thereof, connected with matters in respect of which the state legislature has power to make laws and when the state government is of the opinion that strike in such service, post, employment or class thereof would prejudicially affect the public safety or the maintenance of the supplies or service essential to the life of the community or would result in the infliction of the grave hardships on the community and which the state government by notification in the official gazette declares to be an essential service for the purpose of this Act.* It can be seen that the services related to services related to the essential functioning of courts, judicial officers, sheriffs and Legal Practitioners are essential services since during the lockdown unprecedented situation occurred worse than strikes. In such situation the restoration of fundamental rights and liberty is utmost important. Hereto annexed and marked as **EXHIBIT E** is the copy of the said Act.
- (H) That upon careful perusal of the aforesaid clause vi of Section 2, of the said Act, it reveals that legal services are essential services as the under trial prisoner is presumed innocent until proved



guilty, as such they are part of the community and enjoys the basic fundamental rights guaranteed by the constitution of India as such due to outbreak of COVID 19 virus and the lockdown which affected the public safety or the maintenance of the supplies or essential services to the life of the community, grave hardships arose on the community. The Petitioner submits that under trial prisoners comes within ambit of 'community' as contemplated under clause (vi) of Section 2 of the said Act.

- (I) That the Government of Maharashtra had issued a notification dated 28.06.2020 preventing the bike riders to not to go beyond a radius of 2 kms from their place of residence. The Petitioner submits that he is not questioning the good intention of the government, the grievance of the Petitioner is limited to the point that the lawyers may be included in the essential services so that justice delivery system can smoothly function. Hereto annexed and marked as **EXHIBIT F** is the copy of the Twitter message of Hon'ble Chief Minister of Maharashtra. (the copy of notification could not be availed, therefore the Petitioner craves leave to refer and rely upon the tweet of CMO of Maharashtra)
- (J) That it is pertinent to note that most of the advocates have been practicing in different courts of Mumbai, they have to travel long distances to attend the court as there are 16 different

Metropolitan Magistrate's court in different parts of the city, 2 city civil court campuses in two different part of city, Most of the lawyers travel in and around Mumbai from Thane, Navi Mumbai, Palghar, Nashik and Pune. Apart from Mumbai in other major cities lawyers have to travel from rural places or nearby districts to other districts for contesting the cases in different courts. Therefore it becomes difficult to travel only in private vehicle also, as such some of the lawyers requires public transport including buses, train. If the lawyer's services included in the Essential Services, it would be feasible to travel for attending the court hearing which will expedite the administration of justice system.

- (K) That the Hon'ble Supreme Court has also observed that the lawyer's offices should be exempted from the lockdown. The Petitioner submits that the legal services does not come under the purview of commercial activity as they are not regulated by the Shops and Establishment Act.
- (L) That it is further submitted that lawyers are the most vital part of the court system, lawyers are required for the smooth functioning of the courts. Courts cannot function unless the lawyers represent the litigant and argue their case. Moreso the courts have been functioning throughout the lockdown, but preventing the lawyers

to take part in the justice delivery system is absolutely a contradictory move of the administration.

- (M) The Petitioner submits that the law enforcements at the present time without the availability of essential legal services to the public, will promote lot of illegal detentions and create more legal dispute than it was set to resolve.
- (N) That it is further pertinent to note that in the recent case of custodial death of father-son in Tutikorin, Tamilnadu, one of the aspect is that if those detenus would have received a legal representation on the first date of their detention, such a tragic incident could have been avoided, but unfortunately many lawyers couldnot come out due to restrictions and unable to take up cases due to nonexemption of their service during lockdown. But if the lawyer services would have been covered under Essential Services, we would have seen the effective, speedy administration of justice system.
- (O) That recently the Hon'ble High court in the case of O.P Gupta Versus Union of India W.P.(c) 3068 of 2020 wherein it was directed to the administration to issue e-pass to the various essential service providers, in which High Court staff and trial court staff is also included. It is important to note that unlike High court, in the trial court a staff, magistrate, judges have to

come personally to conduct the cases and for the same the administration is providing e-pass to them but there is no provision for lawyers to get e-pass to attend the court, since without a lawyer court would be unable to work. As such the lawyers are also part of essential services.

- (P) That the administration of justice system is fundamental and quint-essential in all the emergencies, including the present pandemic, it can neither be suspended by the government nor by the courts itself. As such the lawyers are most vital limb of the said system, therefore inclusion of legal services as essential services is very much necessary.
- (Q) That inspite of release of thousands of undertrial prisoners to decongest prisons, in compliance with the directions of the Hon'ble supreme court, still there are many undertrial prisoners languishing in jail and also many arrest have been made by the police. The personal liberty and fundamental rights of the said undertrial prisoners is at stake, they are also required legal representation, so that their rights and liberties gets protected.
- (R) That the Petitioner have added Bar Council of Maharashtra and Goa as a formal party, since it's a governing authority formed for the control and regulation of the lawyers, therefore the reply of

the Bar council is necessary for enlightening the issues of lawyers before this Hon'ble Court.

7. The Petitioner craves leave to add, alter and modify any of the aforesaid grounds with the permission of this Hon'ble court.

8. The Petitioner has not filed any other application/petition on the subject matter of the present petition.

9. There is no other alternative efficacious remedy available to the Petitioner other than filing the present Petition under Article 226 of the Constitution of India.

10. The Petitioner therefore prays that :

(a) This Hon'ble Court by passing appropriate writ, order or direction, be pleased to direct the Respondent no. 2 to exempt the lawyers, their staff from restrictions of lockdown for the purpose of their courtwork only.

(b) This Hon'ble Court by passing appropriate writ, order or direction, be pleased to direct the Respondent no. 3 to revoke the challan issued against the Petitioner for alleged violation of lockdown rules.

(a) This Hon'ble Court by passing appropriate writ, order or direction, be pleased to direct the Respondent no. 2 to the

advocates, legal service providers into the category of 'Essential services'.

- (c) Pending the hearing and final disposal of the present Petition, this Hon'ble Court be pleased to direct the Respondent no.3, not to take any coercive action against a legal practitioner/lawyer, their staff while ingress and Egress the court or their offices.
- (d) Interim/ad-interim relief in terms of prayer clause (c)
- (e) Such other and further relief as this Hon'ble Court may deem fit and proper.

**AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.**

Mumbai

Dated this 2<sup>nd</sup> day of July 2020 Advocate for the Petitioner