



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Cri.Writ Petition (St) No.5159 of 2024

Yogesh Rajendra Sawant

Aged 29 years, Occupation-Agriculturist,

Residing at Room No.3, 2nd Floor, crystal

Park, Road No.6 sector 19, New Panvel.

(Presently Lodged with Police Custody

of Respondent No .2,therefore through

next friend and wife Aditi Yogesh Sawant

nee Aditi Deepak Vedpathak-Adhar

914046436435

... Petitioner.

Vs.

1. The State of Maharashtra

Through Public Prosecutor

Criminal Appellate Side, High Court

Bombay.

2. Senior Inspector of Police

Santacruz Police Station, Mumbai-400 054.

(In FIR No.281 of 2024)

... Respondents.

Mr Prashant Aher with Mr Vijay D. Patil with Ajinkya
Pokharkar for petitioner.

Mr HS Venegavkar, PP with Mr Arfan Sait, APP for State.

PI Suvarna Hulwan Santacruz Police Station, Mumbai present.

Coram: R. N. Laddha, J.

Date : 6 March 2024.

P.C. :-

This petition is directed against the order passed by the Additional Sessions Judge, Greater Mumbai, in Revision Application No.174 of 2024. By the impugned order, the learned Additional Sessions Judge remanded the petitioner to police custody for five days.

2. The factual matrix leading to the filing of the present petition is that the complainant filed an FIR on 27 February 2024 against an unidentified individual. The complainant alleges that while scrolling through the Facebook account, he encountered a video in which someone was giving an interview and making severe accusations against the Deputy Chief Minister, who oversees the Home Ministry. The video, which contained the derogatory remarks and death threats, was broadcasted by a news channel and was seen on various social media platforms, including Facebook, Twitter, and YouTube.

3. The complainant claims to have come across the petitioner's Facebook account, where he noticed that the petitioner had uploaded an existing video containing

derogatory remarks and threats. Consequently, an offence under Sections 500, 153A, 505(1), 506(2), 120B, 34 of the Indian Penal Code, 1860 ('IPC') came to be registered at Santacruz Police Station, Mumbai. Subsequently, on 29 February 2024, the petitioner was arrested and produced before the Metropolitan Magistrate at Bandra, Mumbai. The learned Magistrate, by an order passed on the same day, remanded the petitioner to judicial custody, noting that the video had already been circulated on Facebook, rendering the accused's custody unnecessary. According to the learned Magistrate, the accusations against the petitioner relate to uploading a contentious video on social media, and an unidentified individual gave the threat.

4. On 2 March 2024, the respondent challenged the order dated 29 February 2024 passed by the learned Magistrate vide Revision Application No.174 of 2024. It is the grievance of the petitioner that, without giving any prior notice or granting an opportunity to be heard, the learned Additional Sessions Judge granted a five-day police custody for him.

5. The petitioner, feeling aggrieved and dissatisfied with this order, has filed the present petition. The substantive

prayer in this petition is as follows:

“That this Hon’ble Court may be pleased to call for the records and proceedings of Criminal Revision Application No.174 of 2024, from the file of Additional Sessions Judge, 87th Court at Mazgaon, City Civil and Sessions Court, Greater Mumbai and after examining the validity, legality and propriety of the impugned order dated 02.03.2024, passed in Criminal Revision Application No.174 of 2024, be pleased to quash and set aside”

6. I have heard Mr Prashant Aher, the learned Counsel appearing on behalf of the petitioner, and Mr H.S.Venegavkar, the learned Public Prosecutor for the State, and perused the material placed on record.

7. Mr Prashant Aher, the learned Counsel representing the petitioner, submits that the impugned order was passed without affording any opportunity to the petitioner, whom the Magistrate had already granted judicial custody on 29 February 2024. The learned Counsel expresses concern that the Additional Sessions Judge acted hastily in passing the impugned order, as the Criminal Revision Application was filed and disposed of on the same day.

8. According to the learned Counsel, the impugned order lacks justification because it deviated from the established legal procedure. Furthermore, the petitioner's custodial interrogation was deemed unnecessary, given that the video broadcasted on the news channel was already in the public domain. The petitioner's sole involvement is uploading the existing video on social media. The alleged threat originates from the individual interviewed in the original video. The petitioner contends that the FIR is politically driven and stems from divergent opinions and ideologies. In support of his contentions, the learned Counsel relied upon *(i) Manharibhai Muljibhai Kakadia and Anr. Vs Shaileshbhai Mohanbhai Patel and Ors.*¹; *(ii) Uma Nath Pandey and Ors. Vs State of Uttar Pradesh and Anr.*²; and *(iii) Prime Impex Limited and Ors. Vs PEC Limited and Anr.*³

9. Mr HS Venegavkar, the learned Public Prosecutor representing the State, stoutly defended the order of the Additional Sessions Judge. He submits that the petitioner has not contested his arrest or the subsequent remand order passed by the learned Magistrate. According to him, the

1 (2012) 10 SCC 517.

2 (2009) 12 SCC 40.

3 (2014) 13 SCC 591.

remand order remains in effect up to the date, thus negating any claim that the petitioner is unlawfully detained. The remand order reveals that the petitioner surrendered a different mobile phone, which was not utilised in the crime, while the mobile phone actually used in the crime remains unrecovered. Prior to this incident, the petitioner created and disseminated an objectionable audio clip, leading to the registration of an offence vide CR No.148 of 2024 punishable under Sections 507 IPC read with 92 of the Rights of Persons with Disabilities Act, 2016 at Shirur Police Station, Pune.

10. The learned Public Prosecutor emphasises that the investigation is ongoing, the bail application filed by the petitioner awaits consideration by the learned Magistrate, and even during police custody, the application can be entertained. He relied upon the decision of this Court in ***Krushna Guruswami Naidu Vs The State of Maharashtra***⁴.

11. The record indicates that the petitioner was arrested and produced before the learned Metropolitan Magistrate, Bandra, Mumbai, on 29 February 2024. The Magistrate subsequently ordered the petitioner into judicial custody. However, the impugned order passed in Criminal Revision

4 2009 SCC Online Bom 2096.

No.174 of 2024 nullified the Magistrate's custody order and granted police custody until 7 March 2024. It is worth noting that when the impugned order was passed, the petitioner was in judicial custody. Despite the possibility of promptly issuing and serving notice to the petitioner, no such notice was issued, and he was not granted an opportunity for a hearing. This omission goes against the fundamental principles of natural justice. This itself is sufficient to warrant interference in the impugned order and as such, this Court does not consider it necessary to discuss in detail the submissions advanced by the learned Counsel for the parties.

12. Given the above, the impugned order dated 2 March 2024 is set aside as not sustainable in law. The petition stands allowed accordingly.

13. The parties to act on the authenticated copy of this order.

[R. N. Laddha, J.]