



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION (L) NO.23092 OF 2024

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Sunil Sheshrao Rathod ... Petitioner

Versus

State of Maharashtra & Ors. ... Respondents

Mr. Nimay Dave a/w. Ms Priyanka Dubey, Megha Gupta, Shirish Desai, Ritesh Kesarwani, Krishna Shukla, Franjali Khemnar, Siddhi Mundada, Shreya Gupte, M.M. Pandit, Khushboo Acharya, Vikrant Pandey, Esha Gor, Lavanita Chityala & i/b. Hedgehog & Fox LLP, Advocates for Petitioner.

Ms Sharmila Kaushik, APP for Respondent-State.

Mr. Bajrang Desai, ACP, Virar present.

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CORAM : ARIF S. DOCTOR &  
SOMASEKHAR SUNDARESAN, JJ.

DATE : 7TH NOVEMBER 2024  
[VACATION COURT]

P.C. :

**Factual Background.**

1. This Petition mounts a challenge to detention of the Petitioner's brother one Mr. Anil Sheshrao Rathod ("*Detenu*") on the premise that it was

illegal, and violative of fundamental rights of the Detenu guaranteed under the Constitution of India. The Petitioner has also alleged physical torture of the Detenu at the hands of Respondent No.5, Mr. Bajrang Hindurav Desai, the Assistant Commissioner of Police, Virar (**"ACP"**) after the illegal detention.

2. The Petition was first listed on November 5, 2024, when after hearing the parties and examining the record, and considering the serious nature of the allegations levelled as also the photographs of the Dentenu, we had issued notice to the Respondents and asked for the personal presence of Respondent No.5 along with the Detenu, in Court on the next day. On November 6, 2024, Respondent No.5 was present in Court alongwith several other police officers. However, despite our specific directions, the Detenu was not present in Court. When we enquired as to why the Detenu was not present, we were informed that he was kept in the van outside the Court. We must also note that even after we asked Respondent No. 5 to bring the Detenu to Court, he was produced after the lapse of a fair amount of time.

3. We then, given the very serious nature of the allegations of physical

torture meted out by Respondent No. 5 to the Detenu, which was supported by photographs, directed the Medical Officer of this Court to examine the accused and present a report upon conducting a physical examination of the Detenu in order to ascertain whether there was merit in the allegations of custodial torture. Upon consideration of the report of such Medical Officer, which bore out that the Detenu had been inflicted with physical abuse/torture and also advised further treatment and tests we directed that the Detenu be taken for further forensic medical examination and appropriate treatment to the J.J. Hospital, Mumbai.

4. Today, when the matter was called out, we were presented with a copy of the report from J.J. Hospital, which has *prima facie* further confirmed injury on the right side of the back, contusion of varying size in that region and tenderness. Such a finding further underlined the *prima facie* view that there had been serious physical custodial assault on the Detenu.

5. The case involves investigation by the ACP, Mr. Bajrang Desai, who was himself the Investigating Officer. The alleged offences fall under Sections

420, 428, 406, 504 and 506 of the Indian Penal Code, 1860 ("**IPC**") pursuant to first information report ("**FIR**") dated May 1, 2023. It is noteworthy that the FIR does not name the Detenu at all and contains allegations about the Detenu's father. It is common ground that there has been no amendment or modification to the original FIR and according to the police, the role of the Detenu was recently discovered.

6. According to the police, a notice under Section 41A of the Code for Criminal Procedure, 1973 ("**CrPC**") had been issued to the Detenu on October 28, 2024 asking him to remain present on November 3, 2024 in the office of the said ACP. It is confirmed by Ms. Sharmila Kaushik, Learned APP, upon instructions from the ACP, that until this date, there was no process of any kind against the Detenu. It is alleged that the Detenu did not respond to or appear before the ACP on November 3, 2024. Consequentially, according to the police, the Detenu was picked up by a constable on November 4, 2024 at 12.30 p.m. and he was then brought to the office of the ACP at around 1.00 p.m. The ACP came over to his office at around 2.00 p.m. It is stated that the

office of the ACP does not have any CCTV to record the goings on, inside or outside the office, ostensibly on the premise that such office is not a “*police station*”. We are informed that the office of the ACP is in a *gala* amidst other shops and commercial establishments and this has been the position since 2018 when the original office and police station had been displaced owing to the Bullet Train project.

7. At about 5.30 p.m. on November 4, 2024, the Detenu was released and allowed to leave the office of the ACP. Later that night, in fact a little past midnight i.e. on November 5, 2024, police officials in plain clothes, claimed by the police to be carrying identity cards, picked up the Detenu once again. The father-in-law of the Detenu was informed about the process of arrest of the Detenu being underway.

8. The Learned APP submits that remand matters are typically taken up by the Magistrate after 2.30 p.m. and therefore, the detenu was produced in Court at 3.00 p.m. on November 5, 2024, and the matter was eventually called out at around 5.00 p.m. The remand order was passed granting police

custody of the Detenu until November 11, 2024. According to the Learned APP, the Detenu had been picked up by an auto-rickshaw when he was first picked up at 12.30 p.m. on November 4, 2024 and on a motorcycle ridden by two police personnel with a Detenu seated in the middle, when he was picked up past midnight on November 5, 2024.

9. According to Mr. Nimay Dave, the Learned Counsel for the Petitioner, when the Detenu was picked up at 12.30 p.m. on November 4, 2024, it was not just a constable who picked him up but also the complainant, namely, Mr. Mubarak Fida Husain Chohan (Respondent No. 6) and another person who accompanied the police to pick up the Detenu. According to Mr. Dave, the Complainant has been overseeing and participating in the investigations by the ACP. Mr. Dave would submit that the Detenu was tortured, assaulted and beaten severely in the presence of Respondent No. 6, before he was released from the ACP's office in the evening. After leaving the ACP's office, in view of the serious bodily injuries, Mr. Dave would submit, the Detenu was taken to the Vasai-Virar City Municipal Hospital. According to Mr. Dave, when the

Detenu was leaving the hospital, he was picked up by the Police once again. Meanwhile, a friend of the Detenu who works as a driver for a lawyer contacted the lawyer, to draw their attention to the illegal detention, torture and human rights violations inflicted upon the Detenu. The lawyers immediately wrote letters to the ACP on November 4, 2024 recording the alleged torture and asking him to secure and provide a copy of the CCTV footage from November 4, 2024.

10. According to Mr. Dave, as the Detenu was exiting from the hospital, a red *Tavera* car was used by unknown persons in plain clothes to pick him up. There was no intimation to any of the family member of the Detenu as to where he was being taken. On November 5, 2024, when the matter was argued before us, it was submitted that there had been no approach to any magistrate for remand of the Detenu until then. The Petition as originally filed, challenged the aforesaid action as illegal abduction and thereby a non-compliant arrest of the Detenu, seeking a declaration of the arrest as being illegal.

11. On behalf of the Detenu, advocates wrote a formal letter to the hospital authorities to secure the CCTV footage of November 4, 2024, which would demonstrate the pleadings made in the Petition. A formal complaint dated November 5, 2024 was also made to the higher police authorities against the ACP, providing the sequence of events, and complaining against the illegal abduction of the Detenu and the torture when he was in the custody of the ACP.

12. According to the Petitioner, after the Detenu had been brought to the office of the ACP on November 4, 2024, he had been assaulted with sticks, leather belt and with physical punches, due to which he lost his consciousness. It is alleged that he was brought to consciousness and during such torture, the Detenu was forced to place his thumb impression and signature on several blank pages and also made to implicate his father Mr. Sheshrao Rathod, the person accused in the FIR, by admitting to a debt of Rs.3 Crores, which has been owed by the father, to the Complainant (Respondent No.6). It is specifically alleged in the Petition that a forced confession was



sought to be taken and the Detenu was threatened not to seek any legal recourse. According to the Petitioner, the Detenu was made to walk outside the ACP's office in front of a CCTV camera and was subsequently brought back to the interrogation room where he was once again subjected to torture before he was released. Mr. Dave tendered photographs of the Detenu's back to indicate the extent of torture and beating he had been subjected to when in custody in the afternoon of November 4, 2024.

**Medical Examination.**

13. Initially, we were faced with multiple medical reports when the matter was first heard, and which led to the eventual reference to the JJ Hospital for examination. The Learned APP tendered across the bar a report of the pre-arrest medical examination by the very same Vasai Virar Municipal Hospital, which according to her does not suggest any such medical issue, and this report suggested that the Detenu was fit for custody. While there is no time stamp on such report, another medical report which has a time stamp of

11.50 p.m. of November 5, 2024, from a *Gramin* Hospital, Virar, also tendered across the bar, records back pain, with some tablets prescribed with the marking also stating that the Detenu was fit for custody.

14. It is in this backdrop that we were convinced to have the Medical Officer of the Court provide us with a *prima facie* view, after which we deemed it fit to refer the Detenu to J.J. Hospital for forensic medical examination, and if necessary overnight admission for treatment. We are informed that no oversight hospitalisation was considered necessary, and after examination, the Detenu was sent to the custody of the JJ Marg Police Station last night.

15. With the able and fair assistance of the Learned APP Ms. Kaushik, and Mr. Dave, we have given our anxious consideration to the record before us and the materials that were tendered on each successive day as the hearing in this matter progressed. On November 6, 2024 we were informed by the Learned APP that the Judicial Magistrate, Court No.5, Vasai had remanded the Detenu to police custody for seven days in the evening of November 5, 2024.

16. The remand order dated November 5, 2024 records the submissions of the parties and states that the Magistrate personally verified allegations of the custodial beating, from the accused in the Court in the presence of the advocates for the accused as well as the police. The Magistrate claims to have examined the body of the accused with the assistance of the lawyers and has stated that there is "*no visible injury on the person of the accused except one blackish mark which does not appears to be injury mark*". Based on such physical examination and on the premise that the Detenu has not stated who assaulted him and when, the Magistrate was persuaded that he found no reason to believe the allegations of ill-treatment at the hands of the police. The Magistrate has stated that he indeed found a "blackish mark" but found no other mark of injury. The remand order suggests that the Magistrate has also seen the case diary, which according to the Magistrate shows that the accusation against the accused is well founded and that the custodial interrogation of the accused is necessary.

17. After due inquiries, and instructions from the Deputy Commissioner

of Police, Mira Bhayandar (Respondent No. 4), the Learned APP submitted today that in view of the serious nature of the allegations levelled, the case has been transferred from the ACP (Respondent No.5) to a police station that falls outside the jurisdiction of the said ACP. Since the entire matter would now be taken out of the hands of Respondent No.5, the Learned APP would submit, there would be no further room for misgivings in view of the allegations levelled against the ACP. The Learned APP, on instructions, submits that it is not abnormal for ACP to personally conduct investigations, since every ACP has to personally investigate at least six cases per annum. The Learned APP also submitted that when the current round of custody expires, she has instructions to state that no further custody would be sought.

18. The Learned APP was also instructed to assert that there is indeed no CCTV Camera within the stand-alone *gala* that houses the office of the ACP, since such office premises are not a police station. While such an arrangement is said to be in existence right from 2018, *prima facie*, we are of the view that such an arrangement is a serious breakdown of the checks and

balances that have been stipulated for accountability of the police. Effectively, on the premise of a distinct space, without regarding it as a police station, it has become possible for police officers to completely work in the shadows outside the reach of CCTV cameras, which is now a mandate of law.

19. The primary reliance to justify the legality of the arrest by the police is that the notice under Section 41A of the CrPC had been issued on October 28, 2024 asking the Detenu to remain present before the ACP on November 3, 2024, and that there was no compliance by the Detenu. Therefore, on November 4, 2024 the Detenu was picked up and brought to the ACP's office. However, what is inexplicable in the instant case is that by 5.30 p.m. (leaving the allegations of the intervening torture aside), the ACP thought it fit that no custody of the Detenu was necessary.

20. The departure of the Detenu from the ACP's office has been variously described as "release" and "being allowed to leave" when the point of whether he was arrested in the afternoon was raised. It is confirmed by the Learned APP, under instructions from the ACP (who has been present in Court) that

there indeed had been no arrest at that stage on November 4, 2024. When asked what changed between 5.30 p.m. and half past midnight that night for the arrest of the Detenu and custodial interrogation of the Detenu to have become imperative, it was submitted that some confidential information had been received in the interregnum.

21. There is a serious dispute between the parties about the service of the notice under Section 41A of the CrPC. Mr. Dave claims that no such notice was ever served and insinuates that it is a backdated document, which is why date for appearing before the ACP is shown as having been fixed on Sunday, November 3, 2024, one day before the allegedly illegal detention effected on November 4, 2024. Learned APP submits that the allegation is part of the overall exaggeration in the presentation of the facts, and submits that all procedures had been followed, and since the Detenu did not comply on November 3, 2024, no fault can be found with the detention. Without getting

into such disputed facts, conscious that we are sitting in a writ jurisdiction, we have assumed that Section 41A notice had indeed been served. What is unclear is whether the non-appearance on November 3, 2024 as directed and the attendance on November 4, 2024 would constitute non-compliance on the part of the Detenu. Be that as it may, even on November 4, 2024, after the Detenu was brought to the ACP's office by force, the ACP had thought it fit to release the Detenu and allow him to leave by 5.30 p.m. What has transpired thereafter to change the mind of the ACP to have an overnight arrest of the Detenu that very night, is what caused us to call for the case diary to examine the reasons recorded in it.

22. We have perused the case diary and examined the reasons recorded in it by the said ACP. Since it is a case relating to on-going investigations, we think it would be appropriate not to reproduce the contents of the case diary in this order. Suffice it to say that *ex facie* no plausible reasons are recorded in the case diary to justify the change of mind for the need for the Detenu's arrest. In a nutshell the diary merely records that the ACP got information

about the Detenu having conspired after his release that he would bring pressure on the police to not investigate the matter further.

23. It is in this backdrop that the allegations of the Petitioner that there had been custodial torture and forced signatures on documents to implicate his father during his detention in the afternoon of November 4, 2024, that needs to be considered. The arrest itself, *prima facie* does not appear to be founded on any plausible or logical material against the Detenu, particularly, since the case diary itself, also reflects that it had not been felt necessary to place the Detenu under custody in the afternoon of November 4, 2024. The only new event that appears to have transpired after the Detenu's release was the formal written complaints by the lawyers against the ACP and the allegations of torture, with demands for preserving of CCTV footage.

24. In somewhat similar circumstances, a Division Bench of this Court in the case of Bhairam Saraswat v. State of Maharashtra (*Criminal Writ Petition (Stamp) No. 7551 of 2024*) dated April 5, 2024, also taking into account allegations of torture, was persuaded to grant interim bail. Mr. Dave would



press for a similar release of the Detenu on interim bail in this matter too.

25. The Learned APP has also submitted that upon a review of the facts and circumstances of the case so far, she submits that no further custody of the Detenu shall be pressed for.

**Grant of Interim Bail.**

26. Taking all the facts and circumstances of the case into account including the medical evidence of injuries that have been *prima facie* sustained recently, the treatment by the magistrate of the complaint of physical torture, the inexplicable change of view on the need for arrest the Detenu that too at 3:00 a.m. after he had been released the previous evening, the intervening threat of legal action by lawyers of the Detenu alleging physical torture, and the nothings in the case diary about apprehension of conspiracy to stall investigations on the basis of the alleged torture, the arrest of the Detenu *prima facie* appears to be illegal. We are satisfied that it would be just and appropriate to grant interim bail to the Detenu until further

orders. The Detenu shall be released forthwith on interim cash bail in the sum of Rs. 10,000. The Detenu shall furnish a PR Bond in the sum of Rs. 10,000 within a period of six weeks from today. As and when the Detenu is called upon to participate in the investigations, he shall be obliged to make himself available – it being made clear that the investigation shall be conducted by a police station which does not fall under the jurisdiction of the ACP–Respondent No.5.

**Other Directions:**

27. We are informed that the case has been assigned by Respondent No.4 to the Nallasopara Police Station, which it is confirmed to us, falls outside the jurisdiction of the said ACP. Needless to say, neither the ACP nor any officers in a line of reporting under his authority or for that matter any police official involved in the investigation so far under him, shall be engaged in any further activities connected with the investigation of the instant case. It is clarified that such an arrangement would only make the decision of Respondent No. 4

to shift the investigations under new oversight, properly effective.

28. We direct that Respondent No.4 shall personally review the matter entirely, including the institutional processes that are currently in force under his oversight, and file a detailed affidavit in this Court in response to the Petition. Respondent No. 4 shall call for and preserve all footage from the CCTV cameras said to be available outside the office of the ACP located at Chandan Park, Virar (photographs of such cameras have been tendered by Mr. Dave). The Learned APP has instructions from the ACP to state that the camera is not installed by the police but by occupants of neighbouring galas. Be that as it may, the footage of all such cameras in the vicinity of the ACP's office for the entire period between November 3, 2024 (starting at midnight of November 2, 2024) and November 7, 2024 12.00 noon shall be obtained and secured by Respondent No. 4. So also, the CCTV camera footage as available from in and around the premises of the Vasai Virar Municipal Corporation Hospital for the aforesaid period shall be obtained and secured by Respondent No. 4. Also, the Petitioners shall be at liberty to place before

Respondent No. 4 all material which they have submitted to show the intimidation and threats meted out by Respondent No. 5.

29. Based on scrutiny of such footage and internal factual enquiries of the conduct of activity in the case in relation to the Detenu, Respondent No.4 shall identify as to whether the description of the detention as set out in the Petition, or the version of the police as instructed to the Learned APP, or for that matter, any other version, is actually accurate. Based on such examination, a detailed factual affidavit shall be filed by Respondent No. 4 within a period of four weeks from today.

30. Such affidavit shall also set out the institutional response to the lacuna such as the free availability of a safe space for conducting interrogations without any oversight on stand-alone premises of a police officer in a *gala*, ostensibly not being a “police station”, staying outside the coverage of CCTV cameras. The said affidavit to be filed by Respondent No. 4 shall be vetted by Respondent No.3 (Commissioner of Police), before it is filed.

31. We note that till date, despite notice, Respondent No. 6, the

Complainant had not entered appearance. Respondent No. 6 shall file a reply within a period of four weeks from today.

32. This petition shall now come up for further consideration on regular court on December 10, 2024 for considering the passing of appropriate orders and directions based on the findings that would be filed in response to the Petition and as instructed in this order.

33. Stand over to **December 10, 2024**.

34. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]

[ARIF DOCTOR, J.]