

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION (ST) NO. 8169 OF 2021

Lawyers For Just Society ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents

ALONG WITH

WRIT PETITION NO. 1840 OF 2021

Vimal Chandra Umesh Chandra Jha ... Petitioner

Versus

The State of Maharashtra & Anr. ... Respondents

WITH

INTERIM APPLICATION NO. 1444 OF 2021

IN

INTERIM APPLICATION NO. 1337 OF 2021

IN

WRIT PETITION NO. 1840 OF 2021

Mr.Subhash Jha i/b. Law Global for the Petitioner in PIL (ST) No. 8169 of 2021.

Mr.Prashant Pandey a/w. Mr. Tushar Halwai, Mr. A. Dave for the Petitioner in WP No. 1840 of 2021 and Respondent No. 5 in PIL (ST) No. 8169 of 2021.

Mr.Deepak Thakare, Chief Public Prosecutor a/w. Mr. Jayesh P. Yagnik, PP for the State, in the above Writ Petitions.

Mr.Pradip Gharat for Mr.Navnath Narayan Gole (Org. Complainant in CR No. 137 of 2021) Respondent No. 4 in PIL (ST) No. 8169 of 2021 and Respondent No. 2 in Writ Petition No. 1840 of 2021

Mr.Govind Vishwas Dabhade, Police Sub Inspector, Kharghar Police Station, Navi Mumbai, present.

CORAM : S.J.KATHAWALLA, &
SURENDRA P. TAVADE, JJ.

DATE : 19TH MAY, 2021

(VACATION COURT THROUGH VIDEO
CONFERENCING)

P.C. :

1. The Order dated 17th May, 2021, passed by this Court in the above Public Interest Litigation ('PIL') is relevant and is therefore reproduced hereunder :

"1. This is a Writ Petition filed in public interest by the 'Lawyers for Just Society' on the ground that the Police authorities have arrested a practicing Advocate (Respondent No.5) on 3rd April, 2021. However, he was not produced in Court of the concerned Magistrate on the following day, and was "paraded" to the Court of the Magistrate on 5th April, 2021 in handcuffs. It is inter alia prayed that investigation in the matter be immediately transferred to an independent investigating agency and the electronic records/evidence be directed to be preserved. The Lawyer (Respondent No.5) who is arrested by the Police has also filed an independent Petition before this Court inter alia seeking similar reliefs. However, since the Petition is not numbered, the same is not circulated before the Court.

2. According to the Respondent No.5 - Advocate, he was arrested on 3rd April, 2021 and produced before the Magistrate on 5th April, 2021 and therefore, his arrest/detention is illegal. It is also his case that without being produced in the Court of the concerned Magistrate on the following day, he was "paraded" to the Court of the Magistrate on 5th April, 2021 in handcuffs.

3. It is also his case that Respondent No.4, who was his client had several criminal cases filed against him. He was representing Respondent No.4 in several such matters and ultimately they became very close friends. At the instance of Respondent No.4, he also entered into an Agreement with Respondent No.4 to buy his premises for an amount of Rs.80 Lakhs. He had accompanied Respondent No.4 to several places, i.e. Mumbai, Aurangabad, Ahmedabad etc. However, a missing complaint was filed by the

wife of Respondent No.4 and the police ultimately arrested Respondent No.5 on a false charge of him having kidnapped Respondent No.4.

4. Respondent No.5 was in police custody from the date of his arrest i.e. 3rd April, 2021 upto 11th April, 2021 and thereafter, he is in judicial custody till date.

5. Initially, we enquired from Mr. Thakare, Chief Public Prosecutor as to when Respondent No.5 was arrested. He on instructions from the Police Officer Mr. Dabhade, who admittedly arrested the Respondent No.5, informed us that Respondent No.5 was arrested on 3rd April, 2021 and produced before the Magistrate on 5th April, 2021. We therefore, pointed out to the Chief Public Prosecutor that in that case Respondent No.5 is correct in alleging that he was not produced before the Magistrate within 24 hours of his arrest and therefore, his arrest is illegal. Thereafter, Mr. Thakare changed his statement. He now stated that the FIR was registered on 5th April, 2021 and he was arrested at 4.39 early in the morning of 5th April, 2021. When we inquired from Mr. Thakare as to who arrested Respondent No.5 he informed us that the officer had gone to his residence and had arrested him. When we again inquired as to who was the officer who went to the residence of Respondent No.5 to arrest him, Mr. Thakare, on instructions, once again changed his statement and informed us that Respondent No.5 was already in the Police Station on 5th April, 2021 at 4.30 a.m.

6. When Mr. Thakare was asked whether the Police authorities can produce the CCTV footage for the period 3rd April, 2021 upto 5th April, 2021, he has informed the Court that there are no CCTV cameras in the concerned Police Station and they have started the installation work of CCTV cameras only on 1st May, 2021. In response, the Learned Advocate appearing for the Petitioner in the above Public Interest Litigation as well as the Learned Advocate appearing for Respondent No.5 submit that the statements are incorrect and the CCTV cameras were already installed in the Police Station at the relevant time. Mr. Thakare admits that Respondent No.5 was handcuffed when he was taken from the police station upto the Court premises. However, Mr. Thakare states that he does not support nor would he attempt to justify the handcuffing of Respondent No.5 – Advocate.

7. The above conduct on the part of police authorities in a serious matter like this, is unacceptable. The State is therefore, directed to file its detailed Affidavit by 19th May, 2021.

8. Place the above Writ Petition on 19th May, 2021 alongwith Writ Petition No.1840 of 2021, when Mr. Thakare shall also produce the Police / Station Diary for the period 3rd April, 2021 till date.”

2. Today, the Advocate for Vimalchandra Umeshchandra Jha – Respondent No. 5 in PIL (ST) NO. 8169 of 2021 has also circulated the Writ Petition filed by Vimalchandra Umeshchandra Jha, being Writ Petition No. 1840 of 2021 inter alia alleging :

- i. That the Petitioner is a victim of a well-orchestrated conspiracy hatched by the Complainant Shri Navnath Narayan Gole in collusion and connivance with the police officials of Kharghar Police Station ;
- ii. That under Memorandum of Understanding (‘MOU’) dated 27th December, 2020, executed by and between the Petitioner and the Complainant, the Petitioner had agreed to purchase the flat of the Complainant at Vashi, Navi Mumbai, for consideration of Rs.80 Lacs ;
- iii. That the MOU is duly signed and notarized and the Complainant has acknowledged therein that he has received Rs.50 Lacs towards sale consideration from the Petitioner ;
- iv. That the Complainant was not able to complete the deal and the Petitioner had demanded back his advance payment of Rs.50 Lacs from the Complainant ;

- v. That the Complainant informed the Petitioner that he does not have the said amount and that he will arrange for the same from his relatives and associates ;
- vi. That therefore the Petitioner along with his friend accompanied the Complainant and two of the Complainant's friends, first to a farmhouse in Karjat and from there to Murbad and thereafter to a Hotel called Peru-Chi-Baug at Nashik, but the Complainant failed to arrange for the money as promised by him ;
- vii. That the Petitioner realizing that the Complainant was just wasting his time, left from Nashik in a taxi back to his home and the others stayed behind;
- viii. That on 3rd December, 2020, the Petitioner was called by Kharghar Police Station, Navi Mumbai, and was unlawfully detained for two days. The Police Officer demanded the original papers, i.e. MOU executed by and between the Petitioner and the Complainant and he informed the Petitioner that in return for the same, he would not register any case against the Petitioner ;
- ix. That since the Petitioner refused to handover the original papers / MOU under such threats to the police authority, an FIR No. 137 of 2021 came to be registered on 5th April, 2021 at 3.36 a.m., for offences punishable u/s. 323 r/w 34, 364A, 365, 387 and 506 of the Indian Penal Code, 1860 (**'the Code'**) ;
- x. That the Petitioner was produced before the Judicial Magistrate First Class, Panvel, on 5th April, 2021 when the police custody of the Petitioner was granted till 8th April, 2021 and thereafter extended from time to time ;
- xi. That since the Petitioner was unwell his RTPCR test was conducted and

the Report showed him to be Covid positive ;

xii. That pursuant to an Application dated 11th April, 2021, to allow the Petitioner to be shifted to a private hospital on the ground that he was Covid positive and that he survives only on one kidney, he was shifted to a private hospital;

xiii. That the collusion between the officials of the Kharghar Police Station and the Complainant is clear from the fact that the FIR was registered in the early morning on 5th April, 2021, when in fact the Petitioner was detained in police custody since 3rd April, 2021 and was produced before the JMFC only on 5th April, 2021 and that too in handcuffs. The Investigating Officer travelled to the Court of the concerned JMFC in the car of the Complainant. The police officers of Kharghar Police Station are refusing to produce the CCTV footage from 3rd April, 2021 to 6th April, 2021 only because the same will establish the Petitioner's illegal detention since 3rd April, 2021. The Petitioner had himself seen that there were CCTV cameras in the Kharghar Police Station and the same were operational on 3rd April, 2021.

3. The Petitioner has therefore moved the Writ Petition No. 1840 of 2021 for quashing of CR No. 137 of 2021 registered by the Kharghar Police Station, Navi Mumbai, for the offence punishable under Sections 323 read with 34, 364A, 365, 387 and 506 of the Code ; for ad-interim reliefs directing the Respondent not to take any coercive steps till final disposal of the said Writ Petition ; to appoint a Retired High Court Judge to enquire into the illegal arrest of the Petitioner from 3rd April, 2021 at 20.30 IST to 5th April, 2021 till 14.00 IST, and submit a detailed report to this Court ;

to direct the Commissioner of Police, Navi Mumbai, to preserve the CCTV footage of Kharghar Police Station from 2nd April, 2021 00.00 IST to 5th April, 2021 23.59 IST and the same to be provided to this Court and a copy of the same to be provided to the Counsel for the Petitioner ; to direct the Commissioner of Police, Navi Mumbai to provide Call Data Records (‘CDRs’) of the Complainant, Investigating Officer and the Crime Police Inspector of Kharghar Police Station from 2nd April, 2021 00.00 IST to 15th April, 2021 23.59 IST and the same to be provided to this Court ; to direct the Respondents to provide details of the tower location of both the mobile phones of the Petitioner and a copy be provided to the Counsel for the Petitioner and to grant ad-interim relief by directing the Respondent not to take any coercive steps till final disposal of the said Writ Petition by this Court, and any other relief/s as this Court may deem fit in the matter.

4. Shri Shatrughna D. Mali, Senior Inspector of Police, Kharghar Police Station, Navi Mumbai, has filed an Affidavit dated 18th May, 2021, wherein he has stated that the Apex Court has in several of its decisions set out the circumstances under which the Accused can be handcuffed. He has stated that the Deputy Commissioner of Police will carry out necessary enquiry with regard to the aspect of handcuffing the Petitioner, and a detailed report will be produced before the Court. He has tendered an unconditional apology to this Court on the ground that whilst arresting the Accused, the guidelines given by the Apex Court might not have been complied with by the Subordinate Officers, and therefore he is himself proposing that

a proper inquiry be held in this regard. As regards the illegal arrest, it is submitted that the FIR No. 137 of 2021 was registered on 5th April, 2021 at 3.36 hours and thereafter the Petitioner was arrested at 4.39 a.m. He has stated in the Affidavit that the Petitioner had voluntarily stayed in the Police Station from 3rd April, 2021 upto 5th April, 2021. As regards the CCTV footage at the Police Station he has stated that the installation work of CCTV was going on from 3rd April, 2021 at the Kharghar Police Station and the same was completed on 1st May, 2021, and therefore, the CCTV footage of the alleged period i.e. from 3rd April, 2021 to 6th April, 2021 is not available with the Kharghar Police Station, Navi Mumbai.

5. In the circumstances, we informed Shri Thakare, Chief PP of the State that the Senior Police Inspector of the Kharghar Police Station has already submitted an apology to the Court for handcuffing the Petitioner and has also proposed an enquiry in that regard ; that the submission that the Petitioner continued to stay in the Police Station from 3rd April, 2021 upto 5th April, 2021, when he was arrested at 4.39 a.m., does not appear to be plausible and it is also difficult to accept that the installation work of CCTV and DVR started on 1st April, 2021 at Kharghar Police Station and took almost a month for completion. We therefore suggested /proposed to Shri Thakre that in view of the serious allegations made by the Petitioner against the police officials of Kharghar Police Station, considering that one such allegation qua his handcuffing is already accepted by the Senior Police Inspector of the Kharghar Police Station, who has himself proposed an inquiry in that regard, an independent inquiry

not only into the aspects of the alleged illegal detention of the Petitioner, the commencement of CCTV and DVR in the Kharghar Police Station, and the handcuffing of the Petitioner, needs to be carried out by an independent officer appointed by this Court, but the offences alleged in FIR No. 137 of 2021 registered by the Kharghar Police Station, also needs to be investigated by an independent State Agency. Shri Thakare has fairly accepted the suggestions of this Court and has submitted that the State has no objection, if in the interest of justice, the Court orders an independent inquiry as suggested and also transfers the investigation of offences set out in FIR No. 137 of 2021 to an independent State Agency. In view thereof, at this stage, we pass the following Order :

- a. Shri R.M. Joshi, Principal District & Sessions Judge, Thane is appointed to enquire into the following :
 - i. Whether the Petitioner was illegally detained at the Kharghar Police Station, Navi Mumbai from 3rd April, 2021 until the registration of FIR No. 137 of 2021 at 3.36 a.m. on 5th April, 2021 and his consequent arrest on 5th April, 2021 at 4.39 a.m.
 - ii. Whether the Kharghar Police Station, Navi Mumbai was justified, in accordance with the guidelines provided by the Apex Court, in handcuffing the Petitioner on 5th April, 2021, when he was produced before the JMFC, Panvel, to seek his police custody.
 - iii. When did the work of installing CCTV cameras commence at Kharghar

Police Station, Navi Mumbai, and when was the same completed? In other words, the date from which the CCTV cameras became operational and started recording the entry and exit into Kharghar Police Station and the movement in the said Police Station ?

iv. The Police Personnel of Kharghar Police Station, Navi Mumbai, shall render all assistance to Shri Joshi, including producing before him all the relevant data / documents required by him to complete his inquiry.

v. Shri Joshi is requested to complete the inquiry without being influenced by any observation made in this Order and submit his Inquiry Report to this Court on the adjourned date.

b. FIR No. 137 of 2021 registered with Kharghar Police Station, Navi Mumbai, is transferred to the State CID to carry out investigation in the matter and to take all consequent steps / measures thereafter.

c. Kharghar Police Station, Navi Mumbai shall forthwith forward all necessary papers / records to the State CID to carry out necessary investigation.

d. The Deputy Commissioner of Police, State CID, shall monitor fortnightly the said investigation and the Investigating Officer shall submit his report for the said purpose to the DCP, State CID.

e. Any complaint received / further FIRs filed in regard to the crime which is the subject matter of FIR No. 137 of 2021, shall henceforth be filed only before the State CID for necessary enquiry / investigation / action.

f. All concerned to act on an ordinary copy of this Order duly authenticated by the PS / PA of this Court.

6. Stand over to 15th June, 2021.

(SURENDRA P. TAVADE, J.)

(S.J.KATHAWALLA, J.)