



Suzana

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.751 OF 2022(FILING)

Sarfaraz Sayyad
Son of late Shamshoddin Sayyad
Aged 36 years, married,
Businessman, Indian National,
Resident of H.no.68, Nr. ZOA Office,
Ward No.8, Valpoi,
Sattari, Goa

.... Petitioner.

Versus

1) State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Goa

2) The Sub-Divisional Magistrate,
Valpoi, Sattari Goa

3) The Police Inspector,
Valpoi Police Station,
Valpoi, Sattari Goa.

... Respondents.

Mr Shivan Desai, Advocate with **Ms Maria Carmel Cota Viegas, Advocate** for the Petitioner.

Mr Shailendra G. Bhobe, Public Prosecutor for Respondents.

**CORAM : BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.**

DATED : 11th AUGUST, 2025.

ORAL JUDGMENT: (Per Bharati Dangre, J.)

1. On 27.09.2022, the Central Government in exercise of powers under Section 3 (1) of The Unlawful Activities (Prevention) Act, 1967,

(UAPA) declared the Popular Front of India (PFI) and its associates or affiliates or fronts including Rehab India Foundation (RIF), Campus Front of India (CFI), All India Imams Council (AIIC), etc. as “Unlawful Association.”

Pursuant thereto, on 28.09.2022, the Chief Secretary, Department of Home, in furtherance of the said Notification, conferred the power to be exercised for the said purpose and for such circumstances and under such conditions, upon the District Magistrate or the Deputy Commissioner of District under the State Government and Union Territory of Administration and consequently the State directed the District Magistrate (North) and District Magistrate (South) to exercise the said power.

2. The Petitioner, claiming to be a journalist and an elected Councillor from Valpoi Municipal Council, came to be arrested on 29.09.2022 by Respondent No.3 – The Police Inspector, Valpoi Police Station at 5:06pm by invoking Section 151 of the Code of Criminal Procedure, 1973 (Cr.PC) on the premise that he is a member of the outfit, ‘PFI’ which was declared as Unlawful Association under the UAPA, Act. Three other persons were also arrested along with the Petitioner.

3. On 29.09.2022, the Police Inspector, Valpoi Police Station, preferred an application before the Sub-Divisional Magistrate at Valpoi, for initiation of action under Section 107 Cr.PC. and for submission of a bond for a minimum period of time for keeping good behavior in the locality and also imposing stringent conditions.

The application of the Respondent, referred to the arrest of the Petitioner and others under Section 151 of Cr.PC, in the backdrop of the Notification issued by the Department of Home dated 28.09.2022, with reference to the declaration of PFI as an Unlawful Association, and it stated that information is received from reliable source that the persons arrested are suspected to be members of PFI and likely to conduct activities which are banned by the Government of India which may disturb the peace of the locality. The information was also provided that it was learnt that earlier meeting was held at Valpoi.

Apprehending that the persons may indulge in illegal activities in future, which was against the order issued by the Department of Home, Government of Goa and would result in a situation causing breach of peace in the locality for the commission of cognizable offence at the hands of the Petitioner and immediate action under Section 107 of Cr.PC was proposed.

4. The Sub-Divisional Magistrate before whom the application was preferred, considered the grounds, justifying the arrest under Section 151 of CrPC and also the prayer for initiating action under Section 107 CrPC.

Accepting the contention that the Petitioners would involve in any activities affiliated with the PFI or any other group which is banned and since the arrest was effected after following necessary guidelines issued by the Hon'ble Supreme Court, the action was directed to be initiated under Section 107 of CrPC and since the Officer in charge of Valpoi Police Station did not make any request for detention of the Petitioner/accused persons in custody, pursuant to

their production before the Court, they were directed to be released on execution of personal bond of Rs.1 lakh each and one surety ordinarily residing within the local limits of Valpoi Police Station of Rs.1,00,000/-.

It is this order which is challenged in the Writ Petition.

5. Mr Shivan Desai, the learned Counsel representing the Petitioner, by inviting our attention to the power available under Section 151, would submit that only existence of the circumstances enumerated in the provision would justify its exercise and it is his specific contention that in absence of any such material being placed before the learned Magistrate, the impugned order could not have been passed. It is also his submission that the proceedings under Section 151 could not have been combined with the proceedings under Section 107 and he would place reliance upon the decision in the case of **Arun Tagad v/s. State of Maharashtra** in the decision of the Division Bench of the High Court of Judicature at Aurangabad in Criminal Writ Petition No.574 of 2013 where it is categorically held that the two provisions are distinct in nature and will be governed by different parameters.

In addition, it is also the submission of Mr Desai that the Petitioner being a person of repute, has immensely suffered on account of the unjustified arrest under Section 151 and he has approached this Court to declare the said arrest illegal, though he is conscious of the fact the compensation of such arrest may not be within the domain of this Court at this juncture as it would contemplate an inquiry, but he would submit that he shall adopt appropriate proceedings.

6. Mr Bhobe, the learned Public Prosecutor would submit before us that pursuant to the PFI being declared as Unlawful Association, by the Central Government and the Department of Home (General), Government of Goa, issued an order dated 28.09.2022 and a list of members and supporters of PFI in the State of Goa was forwarded to the Superintendent of Police (North) and Superintendent of Police (South) as well as to the ATS for necessary action.

Mr Bhobe would submit that he has not intentionally enclosed the said material, as it would have adverse impact and such material obtained through intelligence could not be placed in public domain and therefore he relied upon his affidavit placed on record affirmed by the Police Inspector in charge of Valpoi Police Station stating that in view of the anticipated threat perception it was necessary to maintain utmost caution and to take appropriate arrangements to meet any situation which would have developed pursuant to PFI being declared as an Unlawful Association.

The affidavit also proceed to state that the Respondent No.3 activated sources to obtain and collate information as also ground intelligence, in order to assess and ascertain the situation as per instructions received from the Superiors to ascertain the situation in Valpoi and also assess the preparedness of the local police to ensure that no untoward event occur in Valpoi on the next day, which was a Friday, apart from other likely issues.

It is therefore the specific contention of Mr Bhobe that to avoid any situation of law and order trouble/communal tension at the hands of the antisocial elements and also in the view of the fact that the meeting of the banned organisation had already been once held in the town, he deemed it appropriate to exercise the power on the basis

of the information that was received and arrested the Petitioner by invoking the power under Section 151, which was a bona fide exercise of the power and ultimately, according to Mr Bhobe, the action taken was in accordance with the directions of the superiors and it was under the supervision of the Superintendent of Police (North) and therefore, he would submit that the exercise of bona fide power to prevent any untoward incident or law and order situation cannot be said to be arbitrary exercise of power.

7. In the wake of the rival contentions advanced before us, the question that falls for consideration was whether the arrest of the petitioner on 29.09.2022, by invoking Section 151 of the Code merely on the ground that he was a member of PFI, was justified.

8. In Chapter XI of the Code of Criminal Procedure under the caption 'Preventive Action of the Police' cast a duty on every police officer who may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence. For our purpose, the relevant provisions are 150 and 151:

“150. Information of design to commit cognizable offences.— Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

151. Arrest to prevent the commission of cognizable offences.— (1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force.”

9. At this stage it is also necessary to refer to Section 107 in the Code of Criminal Procedure which is a provision contained in Chapter VIII, under the caption, ‘Security for keeping the peace and for good behaviour’ and the Section read thus:

“107. Security for keeping the peace in other cases.—(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond 1[with or without sureties,] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.”

10. The placement of the two Sections in two different Chapter itself is indicative of the purpose for which the power conferred could be exercised, as it can be seen that in Chapter VIII, comprises of the provision in form of security for keeping peace and when the Executive Magistrate receive any information that a person is likely to commit breach of peace or disturb the tranquillity or commit any wrongful act which is

likely to impact the public at large, in such a case, he shall be directed to execute a bond for keeping peace for such period as the Magistrate deems fit.

In contrast, though Chapter XI is a preventive action of the Police, it permits arrest of a person, by a Police Officer knowing of a design to commit any cognisable offence and if it appears to the Officer that the commission of the offence cannot be otherwise prevented, to arrest the person without orders from a magistrate or without a warrant.

The difference in the two provisions, being evidently clear, we must notice that the Petitioner came to be arrested by invoking Section 151 but when he was released, an application was preferred before the Magistrate under Section 107 and he came to be released, by executing a personal bond and surety but the Magistrate did not initiate the process under Section 107 by the impugned order, as he directed that the show cause notice under Section 107 to be issued separately.

The respondent No.3 in his affidavit has categorically stated that no further summons in terms of Section 107 of Cr.PC or other proceedings are initiated against the Petitioner.

Therefore, as on today, what is objected to is the arrest under Section 151 Cr.PC.

11. The provision of Section 151 is very specific power as it authorise a police officer to arrest a person without orders from a Magistrate and without a warrant, if he knows of a design to commit any cognisable offence and commission of an offence could not be prevented except by the arrest.

12. The Hon'ble Apex Court in case of **Rajendra Singh Pathania and Others v/s. State (NCT of Delhi) and Others**¹, highlighted the object of Section 151 in the following words:

“17. The object of the Sections 107/151 Cr.P.C. are of preventive justice and not punitive. Section 151 should only be invoked when there is imminent danger to peace or likelihood of breach of peace under Section 107 Cr.P.C. An arrest under Section 151 can be supported when the person to be arrested designs to commit a cognizable offence. If a proceeding under Sections 107/151 appears to be absolutely necessary to deal with the threatened apprehension of breach of peace, it is incumbent upon the authority concerned to take prompt action. The jurisdiction vested in a Magistrate to act under Section 107 is to be exercised in emergent situation.

18. A mere perusal of Section 151 of the Code of Criminal Procedure makes it clear that the conditions under which a police officer may arrest a person without an order from a Magistrate and without a warrant have been laid down in Section 151. He can do so only if he has come to know of a design of the person concerned to commit any cognizable offence. A further condition for the exercise of such power, which must also be fulfilled, is that the arrest should be made only if it appears to the police officer concerned that the commission of the offence cannot be otherwise prevented. The Section, therefore, expressly lays down the requirements for exercise of the power to arrest without an order from a Magistrate and without warrant. If these conditions are not fulfilled and, a person is arrested under Section 151 Cr.P.C., the arresting authority may be exposed to proceedings under the law for violating the fundamental rights inherent in Articles 21 and 22 of Constitution. (Vide: Ahmed Noormohmed Bhatti v. State of Gujarat and Others., AIR 2005 SC 2115).”

13. In the wake of the above observations, clearly stipulating that the power under the said provision is permitted to be exercised only upon knowing of a design of a person to commit a cognisable offence, when we have perused the facts before us and the material that was placed before the Magistrate, except stating that the PFI was declared as an Unlawful Association under the UAPA and it was suspected that the members of PFI are likely to indulge themselves in activities,

¹ (2011) 13 SCC 329

which were likely to disturb the peace in the locality, the applicant came to be arrested.

No other specific material was placed before the Magistrate regarding the design or intention to indulge in any cognisable offence, which could not have been prevented unless and until he was arrested.

The mere apprehension that the person may indulge in illegal activities in future and there is a possibility of breach of peace in the locality or commission of any cognisable offence, according to us, is not sufficient ground which would justify exercise of this power. The power conferred on the police officer necessarily must be discharged with accountability and responsibility.

A provision which necessarily give a go by to the normal process of arrest by either obtaining a warrant or without obtaining necessary orders from the Magistrate definitely contemplate reliable material to reflect upon the justification in the police officer exercising the power and in case of Section 151 when the Police Officer gets a knowledge of design to commit any cognisable offence by a person to be arrested and in order to prevent such an offence taking place, his arrest is effected.

14. We do not find any material in that regard as we have noted that except expressing an apprehension of likelihood of such activity being committed, with no concrete material establishing the link of the Petitioner with the PFI or substantially establishing that he has indulged in activities of the Unlawful Association in the past giving rise to an apprehension that he may indulge into the said activities,

upon it being declared an Unlawful Association, is conspicuously absent.

Hence, we find ourselves in agreement with the submissions advanced before us by Mr Desai.

Apart from this, when we test the aforesaid arrest in the backdrop of Article 21, i.e. “right to life and liberty”, which has considered a right to reputation as a cherished right and an important facet of Article 21 of the Constitution of India, as the term ‘life’ is of wider amplitude and necessarily convey, life with dignity and involve reputation of a person, with the Petitioner being enjoying a position in the society, he definitely has a right to contend that his image in the society has been tarnished on account of the action of his wrongful arrest without sufficiency of the material justifying such an arrest under Section 151 of the Cr.PC.

15. In the wake of the above, we are satisfied that the arrest of the Petitioner is liable to be declared as unlawful as it fail to meet with the requirement of Section 151 Cr.PC. However, since we have noticed that the Petitioner was immediately released, on being produced before the Magistrate, we relegate the Petitioner to the appropriate forum so that he can seek compensation, if he so desires.

With the aforesaid observations, the Petition is made absolute by declaring the arrest of the Petitioner as arbitrary, as it is result of illegal and unlawful exercise of jurisdiction.

NIVEDITA P. MEHTA, J.

BHARATI DANGRE, J.