

(2014) 08 BOM CK 0155

In the Bombay High Court

Case No : Criminal Writ Petition No. 275 of 2006

Balasaheb

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Bombay Police Act, 1951 — Section 135, 37, 37(1), 37(1) (3)
Constitution of India, 1950 — Article 21, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 109, 110, 110(e) (g), 110(e)(g), 111
Penal Code, 1860 (IPC) — Section 143, 166, 177, 219, 301

Citation : (2015) ALLMR(Cri) 143 : (2014) 4 BomCR(Cri) 113

Hon'ble Judges : S.S. Shinde, J;P.R. Bora, J

Bench : Division Bench

Advocate : N.B. Suryawanshi, Advocate for the Appellant; M.M. Nerlikar, A.P.P, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

P.R. Bora, J.—Petition heard finally. The petitioner has filed the present petition, claiming compensation of Rs. 1,00,000/-(Rs. One lakh only) and seeking direction against the respondent Nos. 1 & 2 to take stern action against respondent No. 3, who according to the petitioner is responsible for his illegal detention in police custody, and his false implication in chapter proceedings.

2. The petitioner claims himself to be an active worker of Bharatiya Janta Party. It is his contention that the chapter proceeding No. 68/2005 was falsely initiated against him at the instance of respondent No. 3, on the basis of a single crime registered against him. It is his further contention that the said sole crime registered against him was also absolutely false, and he was no way involved in the said crime. It is his further contention that in the said chapter proceeding, though he was arrested at 10.00 am on 23-02-2005, he was not immediately produced before the Special Executive Magistrate and was illegally detained for more than twenty four hours, and was produced before the Magistrate at 3.30 pm on 24-02-2005. It is his grievance that respondent No. 3 violated the guide-

lines laid down in the case of D.K. Basu Vs. State of West Bengal, , at the time of his arrest. It is his specific contention that no information regarding his arrest was given to any of his family members. It is his specific grievance that he was illegally detained and all of his Constitutional rights were violated. The petitioner has further alleged that while in custody of the police, he was tortured by respondent Nos. 3 & 4. He was inhumanely treated by the police, as if he was a habitual criminal offender. It is alleged that the photos of the petitioner were obtained by giving slate in his hand and while taking the petitioner to Ahmednagar he was paraded in Village Kolhar. The petitioner has further alleged that respondent Nos. 3 & 4, only with the intention to harass the petitioner pressed for the direction against the petitioner that he may be subjected to furnish bond in the amount of Rs. 1,25,000/-(Rs. One Lakh twenty five thousand only), knowing well that if such direction is given, it may not be possible for the petitioner to comply the same immediately, and consequently, he will remain in jail till he furnishes the bond in the said amount. The petitioner has alleged that all the actions taken by respondent Nos. 3 & 4 were with ulterior motive, high handed and arbitrary. The petitioner has alleged that the petitioner was unnecessarily arrested to tarnish his image in the society. The petitioner has, therefore, claimed the compensation of Rs. 1,00,000/-(Rs. One lakh only) from the respondents and has also prayed for an inquiry into the illegal acts allegedly committed by respondent Nos. 3 & 4.

3. On behalf of respondent Nos. 3 & 4, respondent No. 3 has filed affidavit-in-reply denying the allegations raised in the petition. Respondent No. 3 & 4 have taken a plea that considering the anti-social activities of the petitioner, it had become necessary for them to take some preventive action, and the same was taken against the petitioner under the orders of superior police officers, and while taking such action, the same has been taken within the four corners of law and strictly following the procedure laid down for the same. Respondent Nos. 3 & 4 have further contended that the petitioner was arrested at 3.30 PM on 23-02-2005, u/s 41(2) of the Code of Criminal Procedure, and thereafter within twenty four hours was produced before the Special Executive Magistrate. It has also been contended that wife of the petitioner was present, when petitioner was produced before the Special Executive Magistrate. Respondents have justified their action in the affidavit-in-reply filed by them.

4. The petitioner has filed a rejoinder to the affidavit-in-reply filed by respondent Nos. 3 & 4, denying the fact stated in the said affidavit-in-reply, in regard to the presence of his wife at the time of his arrest by respondent No. 3. The Petitioner has filed an affidavit of Adv. Bhaskar Tulshiram Pathare, wherein he has stated that the wife of the petitioner was not present on 24-02-2005, when the petitioner was produced before the Special Executive Magistrate, Ahmednagar.

5. Shri N.B. Suryawanshi, the learned counsel appearing for the petitioner made elaborate submissions. The learned counsel pointed out that at the time when chapter proceedings came to be initiated against the petitioner, only one case

arising out of crime No. 10/2005, was pending against him. The learned counsel submitted that even in the said case, the petitioner was falsely implicated. The learned counsel invited our attention to the copy of Panchanama dated 04-02-2005 filed along with the petition and marked as Exhibit C, and submitted that Crime No. 1/2005 was registered at Police Station Rahata, Camp at Loni for the offences punishable under the Bombay Prohibition & Gambling Act, and in the said crime the petitioner had acted as a panch witness in drawing the search and seizure panchanama. The learned counsel submitted that the persons against whom crime No. 1/2005 was registered had agitated on 19-02-2005 in front of the Police Chowki, Kolhar, and they had put one cloth banner outside the said police chowki and they had sat on hunger strike. The learned counsel submitted that when the petitioner had acted as a panch witness in the crime against the said agitators, and when the said agitators were belonging to the rival political group, there was no reason for the present petitioner to sit along with them on hunger strike. The learned counsel submitted that a total false case was prepared and it was demonstrated that the petitioner fled away from the spot and hence he could not be arrested on the spot. The learned counsel submitted that in such circumstances Crime No. 10/2005 for the offences u/s 143 of the Indian Penal Code and u/s 37(1) read with Section 135 of the Bombay Police Act, was registered at Police Station, Loni. The learned counsel submitted that for the alleged act of displaying the cloth banner at the out side of Police Chowki, an offence u/s 3 of the Maharashtra Dis-figuration Property (Prohibition) Act, 1985 was also added in the said crime. Shri Suryawanshi further submitted that even if it is presumed that there was some involvement of the petitioner in the said crime, it was the only offence at his discredit. The learned counsel submitted that on the basis of the sole crime the proceedings came to be initiated against the present petitioner under the provisions of Section 110(e)(g) of the Code of Criminal Procedure and the petitioner was arrested by invoking powers u/s 41(2) of the Code of Criminal Procedure by respondent Nos. 3 & 4.

6. The learned counsel submitted that on his arrest on 23-02-2005 at about 11.00 AM, the petitioner along with the other arrested persons was sent for medical examination. The learned counsel invited our attention to the document filed on record by him, evidencing the fact that he was referred to the Medical Officer on 23-02-2005 for his medical examination. The learned counsel further submitted that it was quite possible for respondent No. 3 to produce the petitioner before the Special Executive Magistrate on the same day, however, intentionally he was not produced and was illegally detained. The learned counsel submitted that on 24-02-2005, the petitioner was produced before the Special Executive Magistrate. The learned counsel, bringing to our notice the submission made by respondent No. 3 in his affidavit-in-reply submitted that a false picture was attempted to be created before the Special Executive Magistrate that the petitioner was a dangerous person and involved in anti-social activities. The learned counsel submitted that with malafide intention the prayer was made in the written application by respondent No. 3, requesting the Special Executive

Magistrate to pass an order calling upon the petitioner to furnish the bond in the amount of Rs. 1,25,000/- (Rs. One lakh twenty five thousand only), knowing well that if such an order is passed it may not be fulfilled and petitioner will have to remain behind the bar till furnishing the bond in the said amount.

7. Shri N.B. Suryawanshi submitted that even the Special Executive Magistrate without ascertaining the nature of the offence pending against the petitioner, implicitly relying on the submissions made before him by respondent Nos. 3 & 4, directed the petitioner to furnish the bond of such an heavy amount of Rs. 1,00,000/- (Rs. One lakh only). The learned counsel submitted that asking to furnish the bond of such a huge amount was impermissible. The learned counsel submitted that the facts stated by the petitioner in his petition that he was arrested at 10.00 AM on 23-02-2005, and further that his photos were obtained at the Police Station by giving slate in his hand, and further that while taking the petitioner to Ahmednagar, he was deliberately paraded in Kolhar village have not been specifically denied by the respondents. The learned counsel submitted that respondent Nos. 3 & 4, though were well aware that the petitioner was the District Secretary of a National Political Party, and further that he was not involved in any unlawful activity, and further that there were no criminal antecedents against him, merely because the petitioner had made some complaints against respondent No. 3, out of vengeance the chapter proceeding was initiated against him and in the said proceeding, he was illegally detained. The learned counsel further submitted that before filing of the present petition, the petitioner has time to time sent the representations to the higher police officers putting forth his grievance before them as to how he was illegally arrested, detained and was harassed by respondent Nos. 3 & 4. The copies of these representations are filed on record by the petitioner. The learned counsel submitted that no proper attention was given to the grievance so made by the petitioner even by the senior police officers, and he was informed that there was nothing illegal in the actions taken by respondent Nos. 3 & 4. The learned counsel submitted that considering the facts involved in the matter, the petitioner deserves to be awarded the compensation as claimed and inquiry needs to be directed against respondent Nos. 3 & 4 for the illegal acts committed by them.

8. The learned Additional Public Prosecutor controverted the submissions made on behalf of the petitioner. Referring to the affidavit-in-reply filed by respondent Nos. 3 & 4, he submitted that the reply so filed is enough to meet with all objections raised by the petitioner. The learned Additional Public Prosecutor submitted that respondent No. 3 had acted in parameters of law and under the directions of his superior officers. The learned A.P.P. submitted that on the information available against the petitioner that he was likely to commit and cause breach of peace in the society, the preventive action u/s 110(e) (g) of the Code of Criminal Procedure was taken against him. The learned A.P.P. submitted that no illegality was committed either in arresting the petitioner or producing him before the Special Executive Magistrate. He further submitted that as has been contended in the affidavit-in-reply, the petitioner was arrested on

23-02-2005 at 3.30 PM and was produced before the Special Executive Magistrate at 12.30 PM on 24-02-2005 i.e. within the period of twenty four hours. The learned A.P.P. submitted that petition is devoid of any merit and it be rejected.

9. The learned A.P.P. brought to our notice that petitioner had filed criminal complaint against respondent Nos. 3 & 4 in the Court of Judicial Magistrate, First Class, Rahata for the offences punishable u/s 166, 177, 219, 341, 342, 500 read with 34 of the Indian Penal Code raising the same contentions which are raised by him in the present petition. The learned A.P.P. pointed out that the petitioner has unconditionally withdrawn the said complaint. It was the contention of the learned A.P.P. that on the same cause of action and for the same reliefs, the petitioner could not have filed the Criminal Writ Petition. The learned A.P.P. further submitted that the prayer made in the present petition seeking compensation of Rs. 1,00,000/- (Rs. One lakh only) was made by the petitioner in the Criminal Revision Application No. 10/2005, filed by him in the Court of Additional Sessions Judge, Kopergaon. However, while deciding the said petition, learned Additional Sessions Judge, Kopergaon has rightly declined to entertain the said prayer. The learned A.P.P. submitted that during the pendency of said revision application, the petitioner has filed present petition and also sought compensation in the present petition also. According to learned A.P.P., since the Criminal Revision which was filed earlier in the point of time, and when the prayer for compensation has been turned down by the competent Court, the petitioner has lost right to claim the same relief before this Court. The learned A.P.P. further submitted that the petitioner had made the grievance with respondent No. 2 herein and his representations were taken care of and it was informed to the petitioner that there was nothing illegal in the actions taken by respondent Nos. 3 & 4.

10. We have carefully considered the submissions made on behalf of the petitioner as well as the respondents, and also perused the documents filed on record. First we would prefer to deal with the objections raised about the maintainability of the present petition.

11. The learned Additional Public Prosecutor has raised an objection that the petitioner had filed a Criminal Revision Application in the Court of Additional Sessions Judge, Kopergaon, Dist. Ahmednagar, wherein he has also prayed for compensation on account of his illegal detention, however, the learned Additional Sessions Judge has refused to award any such compensation. According to the learned Additional Public Prosecutor, the petitioner, therefore, could not have sought the same relief in the present petition. There appears no substance in the objection so raised. We have gone through the order passed by the Sessions Court, while disposing of the Criminal Revision application filed by the present petitioner, the sessions Court has declined to consider the request of granting any compensation, stating that it does not fall within its jurisdiction. The order so passed, therefore, may not come in the way of petitioner to claim compensation

in the present writ petition.

12. The another objection has been raised by the learned Additional Public Prosecutor that, petitioner had filed a criminal case against respondent No. 3 & 4 in the court of Judicial Magistrate, First Class, Rahata, for the offences punishable under Sections 166, 177, 301, 343, 500, read with 34 of the Indian Penal Code, however, the same was unconditionally withdrawn by the petitioner. The learned Additional Public Prosecutor submitted that in the circumstances, making the same allegations and seeking the same action no second petition could have been filed by the petitioner. The learned Additional Public Prosecutor further submitted that the request so made in the present writ petition, seeking action against respondent Nos. 3 & 4, therefore, is liable to be rejected. We are however, not impressed with this argument also. Since the complaint so filed by the petitioner was not decided on merits and was simply withdrawn by the petitioner, he was not precluded from filing the present writ petition, seeking action against respondent Nos. 3 & 4 for illegally detaining him and for filing a false chapter proceeding against him.

13. There is no dispute that the chapter proceedings came to be initiated against the petitioner u/s 110(e) (g) of the Code of Criminal Procedure, which reads thus:-

"Section 110. Security for good behaviour from habitual offenders.-When an Executive Magistrate receives information that there is within his local jurisdiction a person who-

(a).....

(b).....

(c).....

(d).....

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace or

(f).....

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit."

14. A plain reading of sub clause (e) of Section 110 shows that for initiating any action under the said clause, the person against whom such action is to be initiated, must be a habitual offender. There are catena of judgments, wherein the Hon''ble Apex Court as well this Court has clarified as to who is to be termed

as "habitual offender". The word habit implies a tendency or capacity resulting from the frequent repetition of some acts. The word "habit" and "habitually" imply frequent practice or use. Habit is to be proved by an aggregate of acts and to constitute a person a habitual offender, it is necessary that the subsequent offence charged should have been committed by the accused after the previous conviction. In simple words for calling any person as habitual offender, at least more than one crime must be at his discredit. In the instant case, admittedly there is only one offence pending against the petitioner arising out of crime No. 10/2005., the fact apart that according to the petitioner, even in the said offence he has been falsely implicated.

15. Further it is interesting to note that in crime No. 10/2005, the petitioner and few others are alleged to have committed the offences u/s 143 of the Indian Penal Code, u/s 37(1) (3) read with Section 135 of the Bombay Police Act and u/s 3 of the Maharashtra Dis-figuration of Property (Prohibition) Act, 1995. None of the offence charged against the petitioner can be said to be of a grave nature. At least no inference could have been drawn from the said one crime pending against the petitioner that there was a danger from him to the society at large. The F.I.R. dated 19-02-2005 on the basis of which Crime No. 10/2005 came to be registered is filed on record by the petitioner. We have gone through the contents of the said F.I.R. It reveals that some five-six persons had sat on hunger strike in front of the Police Chowki at Kolhar, without obtaining any prior permission therefor to lodge their protest against some police action. It was further alleged that respondent No. 3 gave them an understanding that they have not obtained any permission for sitting on hunger strike, and since the preventive orders u/s 37 of the Bombay Police Act are in force, their assembling in a group of more than five persons was in violation of the said order. It was also alleged that the said persons have displayed a cloth banner on the wall of the Police Chowki. In the set of these facts and merely on these allegations an offence came to be registered against them u/s 143 of the Indian Penal Code and other sections referred herein above. The allegations on the basis of which crime No. 10/2005 came to be registered cannot be said to be of serious nature so as to invite a chapter proceeding out of that.

16. Secondly, the petitioner has come out with a specific case that the persons who were alleged to have sat on hunger strike were the same persons against whom a fortnight back an offence bearing crime No. 1/2005 was registered under the provisions of Bombay Gambling Prohibition Act, and in the said case the present petitioner had acted as a panch witness for the personal search and seizure of the persons involved in the said offence. The fact so specifically stated by the petitioner has not been denied or disputed by respondent Nos. 3 & 4 in their affidavit-in-reply. In absence of any contrary evidence and denial to the said fact, we do not find any reason to disbelieve the version in that regard in the petition, and if that be so, it appears quite improbable as has been argued on behalf of the petitioner, that he will sit on hunger strike as alleged in crime No. 10/2005 along with offenders in crime No. 1/2005.

17. Similarly, the contention of the petitioner that except the aforesaid crime No. 10/2005, no other case is pending against him has also not been denied or disputed by the respondents. In such circumstances, it apparently appears that there was no ground for initiating chapter proceedings against the petitioner, invoking sub clause (e) and (g) of Section 110 of the Code of Criminal Procedure. Nothing has been brought on record from which an inference could have been drawn that the petitioner was desperate and dangerous so as to render him at large without obtaining security from him, and further that his presence without such security was hazardous to the community. In the above circumstances, we have no hesitation in holding that the act of respondent Nos. 3 & 4 of initiating chapter proceedings against the petitioner u/s 110(e) (g) of the Code of Criminal Procedure was not only arbitrary, malafide also.

18. The allegation pertaining to illegal detention of the petitioner is equally serious. In para No. 7 of the petition, the petitioner has specifically averred that the petitioner was arrested on 23-02-2005 by Loni Police at 10.00 am, and was taken for medical examination on the same day at 11.00 am. The petitioner has further averred that after completion of the medical examination, the respondents could have produced him before the Special Executive Magistrate immediately on the same day, however, deliberately petitioner was kept in custody, and was taken to Ahmednagar and produced on 24-02-2005 before the Special Executive Magistrate (LCB), Ahmednagar at 3.30 pm.

19. Regarding the above allegations, the respondent Nos. 3 & 4 have given the following reply:-

" In reply to para No. 7 I deny that the respondent no. 3 got knowledge of the complaint made by the petitioner to the respondent No. 2. I say and submit that the petitioner was arrested in pursuance to the chapter case no. 68/2005 and on the next day i.e. 24-2-2005 at 12.30 p.m., he was produced before the Special Executive Magistrate, Ahmednagar. I deny that the respondent No. 3 and 4 have arbitrary and malafidely lodged chapter case. I further say and submit that the Special Executive Magistrate has released the petitioner in the said chapter case furnishing bond of Rs. 1,00,000/-. I deny rest of the contentions in the said paras."

20. We have carefully perused the entire affidavit-in-reply filed by respondent Nos. 3 & 4. The respondents have not specifically denied or disputed the fact stated in the petition that the petitioner was arrested on 23-02-2005 at 10.00 am and was sent for Medical Examination at 11.00 a.m. It is significant to note that not only that the petitioner has averred in the petition that he was arrested on 23-02-2005, but he has also filed on record the copy of requisition of the even date, whereby he was referred for medical examination which is at Exhibit-L Colly. When there are specific averments, general denial would not be sufficient. Respondents have not clarified as to at which time the petitioner was referred to Medical Officer on 23-02-2005 if not at 11.00 am, as stated by the petitioner. In absence of any contrary material/information there seems no reason to

disbelieve the statement of the petitioner that he was sent for his medical examination at 11.00 am. Thus, it was quite possible for the police to produce the petitioner before Special Executive Magistrate on the same day. However, he was not produced on that day and was detained in custody and came to be produced on 24-02-2005, that too at 3.30 pm as per the version of the petitioner, and at about 12.30 pm as contended by the respondents. It need not be stated that personal liberty has utmost value in the life of a person, and his illegal detention even for a short while has also to be taken very seriously. When the petitioner was arrested on 23-02-2005 at about 10.00 am, in any case he ought to have been produced before the Special Executive Magistrate latest by 10.00 am on 24-02-2005. In such circumstances, even if contention in the affidavit-in-reply of respondent No. 3 & 4 is considered that petitioner was produced before the Special Executive Magistrate at 12.30 pm on 24-02-2005, it was in violation of Section 57 of the Code of Criminal Procedure, and the period spent by the petitioner in custody of the police beyond twenty four hours has to be held as his illegal detention.

21. Moreover, the twenty four hours period prescribed u/s 57 of the Code is the outer limit beyond which the arrested person cannot be detained in police custody. However, it does not mean that the police shall wait for twenty four hours after arresting a person to produce him before the Magistrate. On the contrary, the law mandates that the person arrested shall be produced before the nearest Magistrate as early as possible. In the instant case, there seems every reason to believe that the police could have produced the petitioner before the concerned Special Executive Magistrate on 23-02-2005 itself, and should not have waited and detained the petitioner till 24-02-2005.

22. The next issue falls for our consideration is whether the guide-lines laid down by the Hon"ble Supreme Court, in the case of D.K. Basu Vs. State of West Bengal (supra) were followed in the instant case. The petitioner has alleged that his arrest was not communicated to his family members or near relatives or friends. The aforesaid allegation has not been denied or disputed by the respondent. Para No. 22 of the affidavit-in-reply deals with the contentions raised in para No. 7 of the petition, wherein the petitioner has alleged that his arrest was not intimated to his relatives or family members or friends. However, para 22 of the affidavit-in-reply is silent on the accusation so made by the petitioner. No doubt, there is a general denial that rest of the contentions in the said paras are denied.

23. In para No. 8 of the affidavit-in-reply, it is averred that on 24-02-2005 when the petitioner and other persons were produced before the Special Executive Magistrate and the Special Executive Magistrate directed the petitioner to furnish a bond in the amount of Rs. 1,00,000/-, wife of the petitioner was present there, and she was aware of the order passed by the Special Executive Magistrate. However, the fact remains that nothing has been stated in the affidavit-in-reply that after the petitioner was arrested on 23-02-2005, intimation of that arrest was given to his family members or relatives or friends. The contention of the

respondents that the wife of the petitioner was present, when the petitioner was produced before the Special Executive Magistrate is totally irrelevant. As per the guide-lines laid down by the Hon'ble Supreme Court in case of D.K. Basu Vs. State of West Bengal (supra), it was imperative on part of the Police Officer to immediately inform about the arrest of the petitioner to his family members, or his relatives or his friends. The respondents have admittedly not placed on record any information and/or evidence to show that the arrest of the petitioner was intimated to his family members or near relatives or his friends. The allegations so made by the petitioner that the guide-lines laid down in the case of D.K. Basu Vs. State of West Bengal (supra) were violated in his case, thus, stands sufficiently proved.

24. Further, it is also the grievance of the petitioner that while in custody of the police, he was treated as a hardened criminal. He has specifically stated that his photographs were taken in the Police Station by giving slate in his hand, and while taking him to Ahmednagar he was paraded in village Kolhar. In the affidavit-in-reply these allegations have not been specifically denied or disputed by the respondents. The practice of obtaining photographs of the offenders by asking the offenders to hold the slate in their hand bearing their name on it is followed in the case of habitual offenders or the person involved in serious crimes or anti-social activities. Record shows that there were no criminal antecedents to the petitioner. While he was so arrested, a single crime was at his discredit and that too was for petty offences. In such circumstances, the act of respondent Nos. 3 & 4 to take photographs of the petitioner by putting slate in his hands appears quite unjustifiable and it suggests the vindictiveness on part of the concerned police officers. Likewise, the parading of the petitioner through Kolhar village was also unwarranted, and it also shows the vengeful attitude of the concerned police officers towards the petitioner. There is, thus, substance in the allegation made by the petitioner that he was paraded by the police with the intention of tarnishing his image and to humiliate him publicly.

25. The next issue which requires consideration is the order passed by the Special Executive Magistrate directing the petitioner to furnish the bond in the amount of Rs. 1,00,000/-.

26. Time and again this Court has expressed its dis-pleasure in regard to the manner in which the orders are being passed by the Executive Magistrates under Sections 111 and 116(3) of the Code. In the case of Rajesh Nayak Vs. The State of Maharashtra and Shri S.U. Nandanwar, Asst. Commissioner of Police Kotwali Division (Special Executive Magistrate), the Division Bench of this Court has elaborately discussed and had expressed its disgruntlement in respect of the orders passed by the Executive Magistrates. This Court has held in the said judgment that the provisions of Section 116(3) clearly envisages that the order of interim bond should be passed after recording reasons therefor. The Magistrate while acting under sub section 3 of Section 116 of the Code has to make careful consideration as regards separate case of emergency as

contemplated under the said Section and he must be satisfied that immediate steps are necessary. In the instant case, it is quite apparent that the Special Executive Magistrate did not apply his mind at all. Admittedly, there was only one criminal case pending against the petitioner and that too as mentioned earlier for some petty offences. In such circumstances, the Executive Magistrate was cast with a duty to call the police officer concerned and inquire what was the other material against the petitioner so as to require him to execute an interim bond by invoking provisions u/s 116(3) of the Code. Without there being any material on record merely relying on a police officer and in this matter further there is every reason to believe that merely on insistence of respondent No. 3, the Special Executive Magistrate passed an order directing the petitioner to furnish the bond in the amount of Rs. 1,00,000/-. The order so passed was thus without application of mind and bad in law.

27. The order so passed by the Special Executive Magistrate was bad for one more reason that, the amount of the bond fixed was excessive, unreasonable and arbitrary. The Proviso to Section 116 of the Code provides that, the conditions of such bond, whether as to the amount thereof or as to the provisions of sureties or the number thereof or the pecuniary extent of their liability, shall not more onerous than those specified in the order u/s 111 of the Code. Time and again, the Courts have emphasised that while directing any person for furnishing a bond or surety, no onerous conditions are to be put.

28. In the case of *Rajesh Suryabhan Nayak & Ors. Vs. State of Maharashtra & Ors* (supra), the Division Bench of this Court has made following observations in para No. 9 of the judgment, which are thus:-

" The next important thing which is required to be kept in mind by the learned Magistrate is in relation to the amount of the bond. This should be fixed with due regard to the circumstances of the case, and must not be excessive. The Magistrate should consider the station in life of the person concerned, and should not go beyond a sum for which there is a fair probability of his being able to find security. Imprisonment is provided as a protection to society against the perpetration of crime by the individual, and not as a punishment for a crime committed, it is only reasonable and just that the individual should be afforded a fair chance at least of complying with the required condition of security."

29. Proceeding u/s 110 of the Code are intended to be precautionary and not punitive and, therefore, huge amount of security should not be required. The object of taking bond is not to obtain the money to State, but to prevent crime. In the instant case, as has been alleged by the petitioner, respondent No. 3 has insisted the Special Executive Magistrate by filing a written application before him that the petitioner shall be directed to furnish bond in the amount of Rs. 1,25,000/-. It seems that the Special Executive Magistrate also without any application of mind and without looking to the allegations against the petitioner passed an order, directing the petitioner to furnish a bond of Rs. 1,00,000/-. The order so passed was unconscionable and it is discernible that intentionally

petitioner could not make arrangements of the bond of such an huge amount of Rs. 1,00,000/-, and he was, therefore, sent to Visapur Jail. On 26-02-2005 petitioner could submit the bond in the said amount and was thereafter released on the said date. The period which the petitioner was required to spent in jail was the consequence of an arbitrary order passed by the Special Executive Magistrate on insistence of respondent No. 3. The order so passed if viewed in light of the law laid down by the Apex Court and by our High Court has to be held as an unjust and arbitrary order. We have further no hesitation in holding that if the amount of the bond is fixed arbitrarily and if the person arrested requires to be behind the bar for his inability to forthwith furnish the bond in the said amount, period spent by him behind the bars till furnishing of the bond should be held to be his illegal detention.

30. From the affidavit-in-reply filed by respondent No. 3, it is revealed that the power was exercised by him u/s 41(2) of the Code, under which an officer in-charge of the Police Station is empowered to arrest any person who belongs to one or other categories of persons specified in Section 109 or Section 110 of the Code. The clauses invoked by respondent no. 3 against the petitioner were clauses (e) and (g) of Section 110 of the Code. Considering the facts of the present case, even the exercise of the power u/s 41(2) of the Code, for taking the petitioner into custody without obtaining orders from the Executive Magistrate u/s 113 of the Code was unwarranted. The allegation made by the petitioner that clauses (e) and (g) of Section 110 of the Code of Criminal Procedure were maliciously invoked against him by respondent Nos. 3 & 4, so that he can be arrested u/s 41(2) of the Code is difficult to be ruled out. The contention raised on behalf of the petitioner that he was detained illegally and with malafide intention is borne out by the above acts also.

31. As has been submitted by the learned counsel for the petitioner, the chapter proceeding No. 68/2005 initiated against the petitioner was ultimately dropped u/s 118 of the Code. The learned counsel has filed C.A. No. 3073/2009 along with present petition and has sought permission to amend the petition to incorporate the fact that the chapter proceeding initiated against him were ultimately dropped u/s 118 of the Code. We have gone through the documents placed on record by the petitioner evidencing the said fact. It is significant to note that the observations made by the Special Executive Magistrate, while passing the final order in the said chapter proceeding, he has observed that having regard to the nature of the offence pending against the petitioner it does not appear that the petitioner i.e. opponent in the chapter proceeding, is a habitual offender, and only on that ground the proceeding was dropped against the petitioner. It had also fortified the allegation made by the petitioner against respondent No. 3 that initiation of chapter proceeding was with malafide intention.

32. The petitioner has filed on record the copies of applications/representations submitted by him to the higher police officers. On perusal of the representations so send by the petitioner on 04-01-2005, 02-05-2005, 02-01-2006 and

06-01-2006, it is revealed that in the said representations also the petitioner has specifically averred that he was arrested on 10.00 am on 23-02-2005, however, he was not produced before the Special Executive Magistrate on the same day and was detained in the custody of the police, and was produced before the Special Executive Magistrate on 24-02-2005. It has also been specifically averred by the petitioner in his representation dated 02-01-2006 that no intimation of his arrest was given to his family members or relatives. In the said letter dated 02-01-2006, a complaint was made by the petitioner that after he was arrested on 23-02-2005 his photographs were obtained by asking him to hold a slate in his hand. It was specifically stated by the petitioner that there was no criminal antecedents against him and only one case was at his discredit i.e. crime No. 10/2005. It was also informed by the petitioner that even in that case he was falsely implicated. The reply dated 15-09-2005 and 17-10-2005 given by the Superintendent of Police to the representations made by the petitioner, reveal that enquiry was conducted in the complaint so made by the petitioner through Sub Divisional Magistrate & Deputy Superintendent of Police (Head Quarter), Kopergaon, however, the said papers are not filed on record by the respondents. It appears to us that when the petitioner has made grievance to the higher police officers that he was falsely implicated in the chapter proceeding, and further that he was illegally detained in custody and no intimation of his arrest was given to his family members, the higher police officers ought to have taken the complaint seriously. However, it appears that no such attention was given even by the senior police officers.

33. The petitioner has claimed the compensation amounting to Rs. 1,00,000/-. Shri N.B. Suryawanshi, learned counsel appearing for the petitioner submitted that at the relevant time the petitioner was an active worker of Bhartiya Jantra Party and was working as a Taluka Secretary of the said party. The learned counsel further submitted that because of the false chapter proceeding initiated against him, he was required to be behind the bars for about four days. The learned counsel further argued that, while in custody the petitioner was humiliated by respondent No. 3 by obtaining his photographs by asking him to hold slate in his hand as if he was a history sheeter. The learned counsel further submitted that while taking the petitioner to Ahmednagar for producing him before the Special Executive Magistrate, he was paraded in Village Kolhar. The learned counsel submitted that the aforesaid illegal acts committed by respondent Nos. 3 & 4 cumulatively resulted in lowering down the image of the petitioner in the society, and petitioner was humiliated to a great extent. Considering the facts involved in the present case, the learned counsel submitted that the petitioner deserves to be awarded the compensation of Rs. 1,00,000/-.

34. Through various judicial pronouncements law has been now settled that the compensation can be demanded and granted in the Writ Petition under Article 226 of the Constitution by the High Court. Way back in the year 1993, the Apex Court while delivering the judgment in the case of Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, referring to all earlier judgments on

the point crystallized the law as under:-

" This Court and the High Courts, being the protectors of the Civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to indemnified by and take such action as may be available to it against the wrongdoer in accordance with law-through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with Rudul Sah V. State of Bihar granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, least proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred by the Brother Verma, J."

In the case of D.K. Basu Vs. State of West Bengal, Hon"ble Apex Court in para Nos. 42 & 55 has held thus:-

"42. Some punitive provisions are contained in the Indian Penal Code which seek to punish violation of right to life. Section 220 provides for punishment to an officer or authority who detains or keeps a person in confinement with a corrupt or malicious motive. Sections 330 and 331, provide for punishment of those who inflict injury or grievous hurt on a person to extort confession or information in regard to commission of an offence. Illustrations (a) and (b) to Section 330 make a police officer guilty of torturing a person in order to induce him to confess the

commission of a crime or to induce him to point out places where stolen property is deposited. Section 330, therefore, directly makes torture during interrogation and investigation punishable under the Indian Penal Code. These statutory provisions are, however, inadequate to repair the wrong done to the citizen. Prosecution of the offender is an obligation of the State in the case of every crime but the victim of crime needs to be compensated monetarily also. The Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience."

"55. Thus, to sum up, it is now a well accepted proposition in most of the jurisdiction, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The object is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the Criminal Courts in which the offender is prosecuted, which the State, in law, is duly bound to do. The award of compensation in the public jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

35. The aspect of compensation to be awarded in cases of illegal detention has been dealt with by the Division Bench of this Court, in the case of *The State of Maharashtra Vs. Shri. Sagar Balu Ubhe*, Relevant observations are in para No. 28 of the judgment, which are thus:-

"28. The principles evolved in *D.K. Basu* have been followed ever since: *Mehboob*

Batcha and Others Vs. State rep. by Supdt. of Police, , Haricharan and Another Vs. State of Madhya Pradesh and Others, and Sube Singh Vs. State of Haryana and Others, among them. But D.K. Basu also enunciated the principle of monetary or pecuniary compensation as an appropriate and "indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the right to life of a citizen by public servants." The State is vicariously liable for their acts. The objective is to provide a balm for State-inflicted wounds, not to punish the transgressor or offender. In this case, once the infringement of right to liberty has been established, it remains to determine the quantum of appropriate compensation. In S.P.S. Rathore Vs. State of Haryana and Others, while following D.K. Basu, the Supreme Court held that compensation can be awarded, but this is not jurisdiction that a court should lightly exercise under either Article 32 or Article 226 of the Constitution of India. The courts have consistently permitted monetary compensation consequential upon the deprivation of a fundamental right, the Supreme Court held in S.P.S. Rathore, noting a very large number of cases where this principle has been followed. [Para 10 of the SCC report]. No particular amount has been sought as compensation in the prayers in this writ petition, and, in our view, rightly, for this is a matter ever in the discretion of the court. That some compensation must be ordered to be paid is, in our view, an inescapable conclusion. What are the considerations we should bear in mind while assessing the quantum? The petitioner's antecedents are, we believe, entirely irrelevant and cannot be a mitigating circumstance in favour of the respondent; every person is entitled to the protection of the law, even every recidivist. Should compensation be adjusted according to the social station of the victim? We think not. The only gauge, as we see it, is an assessment of the conduct of the public servants. Where we find their conduct wanting, compensation must follow without regard to the status of the victim. Having regard to the facts of the case, the nature of the testimony and the conduct of the parties, it is our view that an amount of Rs. 5 lakhs is just compensation payable to the petitioner by the 1st respondent. In our view, this cannot be said to be an exorbitant sum, bearing in mind that the State Government has resisted and opposed the enquiry and has not once, but twice applied before us to have the enquiry report quashed. A very considerable amount of judicial time has been thus expended on this matter in one forum or the other. Even otherwise, by present-day standards, we do not think that the compensation we have in mind can at all be considered to be unreasonably high. Needless to add, this amount of compensation is entirely without prejudice to the civil remedies, if any, available to the petitioner".

36. In the light of the observations made and the law laid down in the judgments referred to here-in-above, we have examined the facts of the present case. We have elaborately discussed here-in-above and recorded our conclusions that the chapter proceeding initiated against the petitioner was frivolous and false. We have also held that the petitioner was illegally detained in the police custody. We have also held that parading of the petitioner through village Kolhar and

obtaining his photographs in the Police Station by asking him to hold slate in his hand, were tortuous acts. We have also held that to ask the petitioner to furnish interim bond in the amount of Rs. 1,00,000/- was an arbitrary and unjustifiable order, which was passed at the insistence of respondent Nos. 3 & 4. It has not been disputed that petitioner was active worker of a National Political party. At the cost of repetition, we state that there were no criminal antecedents against the petitioner. It is the matter of record that the chapter proceeding initiated against the petitioner was ultimately dropped u/s 118 of the Code of Criminal Procedure and the petitioner was discharged. Looking to the facts as aforesaid, it does not appear to us that the petitioner has claimed unreasonable amount by way of compensation. We are, therefore, inclined to accept his request in toto, and hold the petitioner entitled for the compensation amounting to Rs. 1,00,000/-. After having considered the facts and circumstances involved in the present case from all angles, according to us to award monetary compensation to the present petitioner is the only practicable mode of redress available for the contravention made by the State through its servants in the purported exercise of their powers. The aforesaid amount of compensation shall be paid to the petitioner by the State Government within three months from the date of this order. It will be open for the State Government to recover the same from the respondent Nos. 3 & 4, the police officers, who have violated the guide-lines laid down in D.K. Basu's case while arresting the petitioner and to whom we have held responsible for illegal detention of the petitioner and for unnecessarily initiating chapter proceeding under sub section (e) (g) of Section 110 of the Code of Criminal Procedure, when there was no evidence to show that the petitioner was habitual offender or and that his existence in the society without security was hazardous to the community. The petition, therefore, succeeds to the above extent, and the rule is made absolute in above terms.