
(2024) 10 BOM CK 0003

Bombay High Court (Nagpur Bench)

Case No: Criminal Writ Petition No. 783 Of 2024

Shahrukh Ziya Mohammad

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision: Oct. 1, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 46(4), 397, 397[1], 397[2]
- Bhartiya Nagrik Suraksha Sanhita, 2023 - Section 43(5)
- Indian Penal Code, 1860 - Section 279, 304A, 337, 338
- Motor Vehicles Act, 1988 - Section 184

Hon'ble Judges: Vinay Joshi, J; Vrushali V. Joshi , J

Bench: Division Bench

Advocate: A.G. Hunge, D.V. Chavhan, N.H. Joshi, S.P. Bhandarkar, F.T. Mirza, A. Kukday

Final Decision: Allowed

Judgement

Vinay Joshi, J

1. Heard. Rule. Rule made returnable forthwith and with the consent of the learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. In this Writ Petition we are confronted with an unusual situation, wherein the action of the learned Sessions Judge, Nagpur of suo moto taking cognizance of the order passed by the learned Judicial Magistrate First Class, Court No.4, Nagpur (Magistrate), has been called in question. The petitioner is one of the kin of deceased in the incident who has raised challenge to the action of Sessions Judge of suo moto invoking revisional jurisdiction vide impugned order dated 30. 09.2024. The challenge is on the ground that there is neither propriety, nor cause for the learned Sessions Judge to invoke suo moto powers for examining the order of the Magistrate.

3. It necessitates us to make a brief reference of few facts which are necessary for the purpose of deciding this petition. The genesis of the entire episode is a 'road accident' which took place on 25. 02.2024 around 1.30 to 1.45 a.m. at Ramjhula Bridge in which two innocents lost their lives. The police have registered Crime No.122/2024 initially for the offences punishable under Section 304-A, 279, 337, 338 of the Indian Penal Code and Section 184 of the Motor Vehicles Act. Later on the police have invoked Section 304 of the Indian Penal Code. The accused/respondent no.2 was initially arrested and released on bail for the offence punishable under Section 304-A of the Code. After invocation of Section 304, the respondent no.2 attempted to secure pre-arrest bail, however, failed upto this Court. By virtue of the order passed by this Court in Criminal Writ Petition No.441/2024 dated 30.08.2024, the investigation has been transferred to State CID.

4. The transferred investigating agency has applied for cancellation of bail and permission to rearrest. After hearing the parties, the learned Sessions Judge vide order dated 25.09.2024 has canceled the bail granted by the Judicial Magistrate as well as, permitted the investigating agency i.e. C.I.D. to arrest respondent no.2/accused.

5. Since the changed investigating agency has crossed all the barriers in arrest, immediately they have moved to the jurisdictional Magistrate seeking permission to arrest. As the accused is a lady and the investigating agency inclined to immediately arrest the accused after sunset and before sunrise, permission was sought. Record indicates that the said application was moved to the Magistrate on the very day i.e. 25.09.2024 at 10.11 p.m. The learned Magistrate having regard to the facts and the provisions of Section 46[4] of the Code of Criminal Procedure (Section 43[5] of the Bhartiya Nagrik Suraksha Sanhita, 2023), has permitted the investigating agency to arrest respondent no.2/accused during night hours with a rider that the arrest shall be made by a woman police officer by following due process of law.

6. It is informed that after passing of the said order in late hours of 25.09.2024, the Investigating Officer has effected arrest of respondent no.2/accused in the midnight. On the following day, the accused was produced before the Magistrate around 3.50 p.m. The Investigating Officer has sought police custody remand for 10 days, which was resisted by the accused. The learned Magistrate has rejected the prayer for police custody vide order dated 26.09.2024. The said order is challenged by State, which is subjudice before the Sessions Court.

7. In the wake of said position, the learned Sessions Judge suo moto invoked revisional powers in terms of Section 397[1] of the Code of Criminal Procedure to examine the order of Magistrate dated 25. 09.2024. The Sessions Judge has directed to register revision in order to ascertain the correctness, legality and propriety of the order of the Magistrate dated 26.09.2024, by which the Magistrate has permitted the investigating

agency to arrest the accused after sunset and before sunrise.

8. For the sake of convenience we wish to reproduce the impugned order of the Sessions Judge dated 30.09.2024, which reads as under :

"IN THE COURT OF SESSIONS AT NAGPUR.

(Presided over by Dinesh P.Surana, Principal

District and Sessions Judge, Nagpur)

Order for entertaining Suo Moto Criminal Revision in

Crime No.122/2024.

(Passed on this 30th day of September, 2024.)

It has come to my knowledge that by order dated 25.09.2024, the learned Judicial Magistrate First Class (Court No.4), Nagpur in Crime No.122/2024 of Tahsil Police Station, Nagpur has granted permission to Tahsil police station Nagpur to arrest a woman accused namely Ritika @ Ritu Malu in the said crime and after sunset and before sunrise.

2] Utilizing the powers under section 397 of the Cr.P.C. i.e. section 438 of The Bhartiya Nagarik Suraksha Sanhita, 2023, this Court of Sessions presiding over by the Sessions Judge, is entertaining this Suo Moto Revision for the purpose of satisfaction as to the correctness, legality and propriety of the findings and order dated 25.09.2024 passed by the Judicial Magistrate First Class, (Court No.4), Nagpur in Crime No.122/2024 of Tahsil police station, Nagpur.

3] The Office is directed to register suo moto criminal revision.

4] Office is directed to call for R & P of Crime No.122/2024 registered with Tahsil police station, Nagpur from the Judicial Magistrate First Class, (Court No.4), Nagpur.

5] Issue notice to the prosecution/ investigating agency and a woman accused namely Ritika @ Ritu Dinesh Malu, returnable on 03.10.2024.

6] The learned Addl. Prosecutor G.N. Dubey waived the notice for the prosecution/investigating agency.

Nagpur.

[Dinesh P. Surana]

Date

:

30.09.2024

Sessions Judge, Nagpur."

9. We have no doubt in our mind that the Sessions Judge has concurrent powers like this Court to call for and examine the record of any proceedings before the inferior criminal Court to satisfy about its correctness, legality or propriety. The Sessions Judge took suo moto cognizance of the order of the Magistrate dated 25.09.2024 to examine the order on above parameters. At the cost of repetition, we may say that vide order dated 25.09.2024, the Magistrate has permitted the investigating agency to effect arrest of a female accused after sunset and before sunrise in terms of Section 46[4] of the Code, which is now Section 43[5] of the BNSS.

10. The learned Counsel for the petitioner would submit that no reason is assigned by the learned Sessions Judge to exercise the suo moto powers. He would submit that, it would hamper the further process and may have impact on some pending/related proceedings. It is brought to our notice that the order of Magistrate dated 26. 09.2024, rejecting police custody has been challenged under revisional jurisdiction and the said revision is still pending. He would submit that unnecessarily those proceeding may either prolong or the revisional Court may get influenced by the action of the Sessions Judge of taking suo moto cognizance.

11. The learned Counsel for respondent no.2/accused has supported petitioner's stand by echoing the submission that there is no propriety for the Sessions Judge in invoking suo moto revisional powers. He has also thrown light on one other aspect, that, pendency of suo moto revision may come in his way i.e. in case of securing bail. He has expressed fear that pendency of the sou moto revision may cause impact on the merits, as well as in securing bail. According to him, the bail application, may get prolonged due to pendency, which would directly affect her right to liberty.

12. The learned Government Pleader appearing for respondent no.1 State CID has joined the submissions canvassed by the earlier two Counsel by contending that the order passed by the learned Magistrate was perfectly justifiable in that situation and thus, there was no occasion or cause for the learned Sessions Judge to suo moto step in.

13. Since the action of Sessions Judge of suo moto invoking the revisional jurisdiction is under challenge, on our request, the learned Senior Counsel Shri F.T. Mirza, who earlier was a panel Advocate for High Court, has advanced his submissions. So also we have heard the existing High Court panel Advocate Shri Kukday to understand the justification for exercising suo moto revisional powers. Both are fair enough to concede that they do not see any justification in exercising suo moto power. They conceded that, nothing is reflected in the order which necessitates to examine the order of the Magistrate. Precisely, they have to say nothing about the impugned order.

14. The issue posed before us for consideration is very limited i.e. to see whether the learned Sessions Judge is right in exercising suo moto revisional jurisdiction in taking up for examination the order of Magistrate permitting police to arrest the accused during night hours. The first and foremost thing which strikes us is that the accused may have got aggrieved by such a permission, but, the accused has nothing to say. Rather the accused has no grievance about grant of such permission to arrest during night hours. Learned Counsel appearing for respondent no.2/accused has specifically stated that they have no grievance against the order of Magistrate dated 25.09.2024 permitting to arrest during night hours. In such a background we have considered the limited controversy.

15. Though the Code empowers the Sessions Judge to exercise suo moto revisional powers, we feel that there must be some cause, reason or trigger for the Sessions Judge to form an opinion that this is a fit case to examine the order. The impugned order dated 30. 09.2024 is totally silent as to what caused or prompted the Sessions Judge to exercise suo moto powers. We may repeat that neither the State CID is aggrieved, nor the accused is aggrieved by the order of the Magistrate. The impugned order is also silent as to what has caused to exercise suo moto powers. Certainly the Sessions Judge has power to examine and satisfy about the correctness, legality and propriety of the order, but, prima facie there must be some reason to exercise such powers. The judicial orders cannot be on personal whims, but, it shall be backed by at least some prima facie reasons. Needless to say that assignment of reasons is the heart of judicial system.

16. On the count of legality, Section 43[5] of the BNSS permits the Magistrate to grant permission to arrest a female during night hours. There exists a statutory provision to grant permission, which the learned Magistrate in his discretion has exercised. The decision of Magistrate does not fail on the premise of procedural illegality.

17. On account of correctness, the Magistrate has expressed in his order that he has gone through the grounds placed by the investigating agency for seeking permission to arrest during night hours. The Magistrate has considered the submission that the offence is serious and accused may abscond, if not arrested immediately, and having found substance in the same, has granted permission. We have been taken through Clause 5 of the reasons placed by the investigating agency for seeking permission to arrest, which indicates that there is likelihood that the accused may abscond or there are chances that she may leave the country. It is also stated that in past, after rejection of pre-arrest bail, the accused has fled from the State and went to State of Rajasthan. Perhaps this reason might have weighed the Magistrate in exercising powers to hold that an exceptional case has been made out.

18. On the ground of propriety also we see no justification to take suo moto action. The phrase 'propriety' means need, suitability, necessity, requirement of time, but, on these lines the action is unsustainable. Rather, the action of taking suo moto cognizance in the matter which is of no avail would yield nothing, but, would slow down the ongoing proceedings. Neither we get any clue from the order of Sessions Judge as to what is the reason to invoke the powers, nor after going through the order of Magistrate, we see any reason to hold that the order is improper, against the provisions of law or passed in absence of any propriety.

19. When the statute has invested powers to the Court, it also carries responsibility. The Statute has invested simultaneous revisional powers on the Sessions Court, at par with the High Court by reposing faith, confidence and under expectation of exercising the powers to see that justice is done in accordance with the Rules and jurisprudential principles. Inferior Courts do not exceed the jurisdiction or abuse the powers vested in the said Court or the situation warrants so. Sou moto powers are to be exercised sparingly when the orders of inferior Court are against the law, procedure or there is a glaring mistake. The uncalled activism would put unnecessary hindrance in the smooth legal proceedings. Unless there are reasons, Court cannot resort the powers as there are various repercussions of the pendency of uncalled proceedings. Suo moto revision may certainly hamper the expeditious disposal of the pending revision filed by the State CID seeking police custody. Likewise, the bail application, if any, filed by the accused may get delayed for the reason of pendency of this revision. There may be some other repercussions which we cannot speculate, but, we are sure that it would cause hurdle in the process which is already delayed as the long history depicts so. While exercising the powers, the Judge should carry sense of responsibility and shall not step in unless there are reasons to prompt judicial mind that it is a fit case to exercise suo moto powers.

20. Moreover, Section 397[2] of the Code precludes to invoke revisional jurisdiction, if the order is of interlocutory nature. The Three-Judge Bench of Supreme Court in case of *Madhu Limaye .vrs. The State of Maharashtra* – [1977] 4 SCC 551 has clarified the position that the order which will not culminate the proceedings, can be termed as interlocutory order. The order of Magistrate does not deal with the final rights of the parties, but, it is merely on a matter of procedure. The order which has no bearing on the proceeding nor would terminate the proceeding is purely of interlocutory nature, which is not revisable. Despite such statutory rider, revisional powers are invoked that too suo moto. This aspect also ought to have been taken into consideration while passing the impugned order.

21. At the cost of repetition, we say that at the most the aggrieved person by such order of Magistrate is the accused, who has no grievance at all. The learned Sessions Judge would have assigned some reasons to give signal that there are grounds which

necessitates him to exercise suo moto powers. Apart from that, the order permitting arrest during night hours, has already been executed, as the accused was arrested, produced before the Magistrate and the matter has traveled much beyond. We see no fruitful purpose in testing the said order as the things cannot be reversed.

22. In view of above, we find that the learned Sessions Judge seriously erred in invoking suo moto revisional power. We expect that the Sessions Judge shall keep restrain in exercising such powers and also think about the impact of such order on other pending proceedings. The higher Courts must act with higher responsibility. Moreover, nothing has to be gained by testing the order, and therefore, uncalled, unreasoned order of the Sessions Judge would not sustain in the eyes of law. As a result of above discussion, Writ Petition succeeds. The order passed by the Sessions Judge, Nagpur dated 30.09.2024 in Suo moto Criminal Revision in Crime No.122/2024 is hereby quashed and set aside.

We may clarify that the action of the Sessions Judge in taking cognizance or any observations made in this judgment, will have no impact on all the pending proceedings, including the revision and bail application, which shall be decided expeditiously.

Rule is made absolute in aforesaid terms.