



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1830 OF 2024

Virendra S/o Sitaram Wagh,
Age-43 years, Occu:Agriculturist,
R/o-Hamaalwadi, Khultabad,
Tq-Khultabad, Dist-Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
(Through P.I. Gondi Police Station),
Gondi Police Station, Tq-Ambad,
Dist-Jalna,
- 2) DGP, State of Maharashtra,
Lion Gate, Fort, Mumbai-400001,
- 3) Devendra Gangadhar Fadanvis,
Age-54 years, Occu:HM & Politician,
R/o-277, Gorepeth, Nagpur,
Maharashtra - 440010,
- 4) Tushar C. Doshi,
At relevant point of time working
as SP, Jalna, Dist-Jalna, Maharashtra.

...RESPONDENTS

...
Mr. Eklavya Potdar Advocate for Petitioner.
Mr. A.R. Kale, A.P.P. for Respondent Nos. 1 and 2.
...

**CORAM: SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

DATE : 26th MARCH, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :**1. Present Petition has been filed for following reliefs:-**

"B) This Hon'ble High Court, may issue writ of mandamus or direction or orders in like nature, direct the respondent No.1 to register FIR against concerned police officials and concern respondents.

C) This Hon'ble High Court, may issue writ of mandamus or direction or orders in like nature, direct respondents to form SIT and conduct fair investigation to meet the ends of justice; or/and in alternate;

D) This Hon'ble High Court, may issue writ of mandamus or direction or orders in like nature, to conduct independent and impartial judicial enquiry to be headed by retired Hon'ble Judge of this High Court and thereby guilty may be kindly be held accountable as per the due process of law."

2. We have heard learned Advocate for the petitioner and learned APP for respondent Nos.1 and 2. After considering the submissions, it is not even necessary to issue notice to the other respondents.

3. The learned Advocate for the petitioner submits that the petitioner is an R.T.I. activist and is an agriculturist. The petitioner wants respondent Nos. 1 and 2 to take action as stated in the First Information Report (for short "the FIR"). This

is in view of the fact that Marathi Quota Activist (as stated in the Petition) Mr. Manoj Jarange was on hunger strike on 29th August 2023, demanding reservation of Kunbi caste certificate to Maratha Community and to support him, large number of persons from Maratha Community had gathered at Antarwali-Sarati, Taluka-Ambad, District-Jalna. It is the contention of the petitioner that those persons were supporting the said leader calmly and without any reaction. However, the Government had deployed around 1500 police personnel as well as C.R.P.F. officers on 1st September 2023, as the petitioner says, all of a sudden the police force resorted to brutal lathi-charge and tear gas shell were fired. As a result of which, many persons i.e. the protesters who had gathered, had received severe injuries. The petitioner had approached the concerned police authority to lodge a complaint against those persons responsible for barbaric and brutal lathi-charge on unarmed and peaceful protesters, however, he had not received any reply from the Police Authorities. Therefore, an application was filed under the Right to Information Act, 2005 on 20th September 2023, seeking information as to what action has been taken on his complaints dated 2nd September 2023 and 8th September 2023. There was no reply and therefore, the Petitioner was required to approach

the First Appellate Forum under the Right to Information Act. A reply was then given that the inquiry is initiated in respect of the lathi-charge and the firing. However, it was specifically stated that offences cannot be registered in view of the departmental inquiry. Learned Advocate for the petitioner submits that the incident has affected many persons and therefore, there ought to have been an action. The right to protest enshrined under the Constitution of India has been thus taken away and there has to be an inquiry in respect, as to who had ordered the lathi-charge and tear gas shells. Abruptly, respondent No.4 was then transferred.

4. Learned Advocate for the petitioner, therefore, relies on the decision in *Ramlila Maidan Incident in Re, 2012(5) SCC 1* i.e. Suo Motu Writ Petition (Criminal) No.122 of 2011, decided on 23rd February 2012 by the Hon'ble Supreme Court, wherein after taking note of the entire incident, it has been observed that when there are police excesses and violation of fundamental right, then there has to be an inquiry. It is then observed that "In the event of any untoward incident resulting into injury to a person or property of an individual or violation of his rights, it is the Police alone that shall be held answerable and responsible for the consequences as may follow in law." He then relies on the decision in *Ramesh*

Kumari vs. State (NCT of Delhi) and others, (2006) 2 SCC 677, wherein, on the basis of the observations in *State of Haryana vs. Bhajan Lal, 1992 Supp. (1) SCC 335*, which had examined the whole gamut and intricacies of the mandatory nature of Section 154 of the Code of Criminal Procedure, and it is observed "The view expressed by this Court in paras 31, 32 and 33 as quoted above leave no manner of doubt that the provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of such an information disclosing cognizable offence." Learned Advocate for the petitioner further submits that only after the registration of the offence and the investigation, the *bona fides* of the petitioner can be questioned. Therefore, on the basis of the petitioner's complaint application dated 2nd September 2023, the FIR should be registered.

5. The learned APP, on the last occasion itself when the matter was on Board on 21st February 2025, had relied on the decision in *Vinubhai Haribhai Malaviya and others vs. State of Gujarat and another, 2020 CRI.L.J. 472*, in which it was held that the Magistrate has power to order further investigation under Section 156(3) of the Code of Criminal Procedure even at post-cognizance stage. He submits that the inquiry is going on and even that was conveyed. Further, offence vide Crime No.369 of

2023 has been registered with Gondi Police Station under Sections 307, 333, 353, 427, 435, 120-B, 143, 147, 148, 149 of the Indian Penal Code, with Section 135 of the Maharashtra Police Act and Section 3 of the Prevention of Damage to Public Property Act. As well as Crime No. 370 of 2023 has also been registered with the same Police Station, almost for the same offences, in addition to Section 7 of Criminal Amendment Act. It was also pointed out by the learned APP that the petitioner has not taken up the steps which were necessary in view of *Priyanka Srivastava and another vs. State of UP and another, 2015 (6) SCC 287*, and he has alternate remedy to approach the Magistrate under Section 156(3) of the Code of Criminal Procedure.

6. At the outset, we would like to say that in the beginning itself we had asked the learned Advocate for the petitioner, as to whether the present Petition has been filed as a public interest litigation, but he has answered it in the negative and submits that the Petition has been filed in the individual capacity of the petitioner. Therefore, taking into consideration the said aspect, we are required to consider the facts as well as the law. We may not go into the facts of the case for the simple reason that the

facts might be as stated in the Petition. But admittedly, the petitioner does not say that he was present at the spot when the incident had taken place. According to him, the incident had taken place on 1st September 2023 and then he had given Exhibit-A complaint on 2nd September 2023. We would like to reproduce the said complaint and the translation thereof for better understanding and assessment, which reads thus:- "

"

दिनांक : 02/09/2023.

प्रति,

मा. पोलीस उपनिरीक्षक साहेब,
पोलीस ठाणे, गोंदी,
ता. अंबड, जि. जालना.

विषय : श्री. देवेंद्र फडणवीस, गृहमंत्री, महाराष्ट्र राज्य यांच्या विरुद्ध मौजे अंतरवाली सराटी, ता. अंबड, जि. जालना प्रकरणी सखोल चौकशी करून गुन्हा दाखल करणेबाबत...

संदर्भ : 01 सप्टेंबर, 2023 अंतरवाली सराटी, ता. अंबड, जि. जालना येथे लाठीचार्ज झाल्याप्रकरणी विविध प्रसार माध्यमामध्ये प्रसारीत झालेले वृत्त.

महोदय,

वरील विषयी गांभीर्याने तक्रार करतो की, मौजे अंतरवाली सराटी, ता. अंबड, जि. जालना या गावात मनोज जरांगे यांचे लोकशाही मार्गाने मराठा आरक्षण मिळविण्यासाठी उपोषण सुरू होते. हे आंदोलन श्री. देवेंद्र फडणवीस, गृहमंत्री, महाराष्ट्र राज्य यांना सहन होत नव्हते. म्हणून षडयंत्र रचून या ठिकाणी दंगल घडवून आणणे व येथील जनतेला जिवंत मारण्याचा प्रयत्न करण्यासाठी आपल्या खात्याच्या पोलीस कर्मचा-याला आदेश देऊन लाठीचार्ज व गोळीबार केले व यामध्ये अनेकजण गंभीर जखमी झाले. म्हणून यांच्यावर वरीलप्रमाणे गुन्हा दाखल करण्यात यावा.

तसेच तत्कालीन गृहमंत्री अनिल देशमुख हे गृहमंत्री असतानाही यांच्यावर गुन्हा नोंद करण्यात आला होता. हे काही महिने तुरुंगातही गेले होते. त्यामुळे कायदा सर्वासाठी समान असल्यामुळे या प्रकरणी राज्याचे श्री. देवेंद्र फडणवीस, गृहमंत्री, महाराष्ट्र राज्य यांनी षडयंत्र रचून दंगल घडविणे व जनतेला जिवीत मारण्याचा प्रयत्न केल्यामुळे यांच्यावर चौकशीची सुरुवात करून गुन्हा नोंदवावा, ही विनंती.

नसता आम्ही मा. न्यायालयात दाद मागील याची नोंद घ्यावी.

आपला विश्वासू,

स्वाक्षरित /—
विरेन्द्र सिताराम वाघ
माहिती अधिकारी कार्यकर्ता,
प्रभाग क.06, घर क.71, मु.पो. खुलताबाद,
ता. खुलताबाद, जि. औरंगाबाद — 431 101

प्रतिलिपी :

1) मा. राज्यपाल, महाराष्ट्र राज्य, मुंबई . यांना वरील प्रकरण गंभीर कारणाने आपण जातीने लक्ष देवून योग्य ती कार्यवाहीस्तव आपल्या सेवेत सादर.

टिप : मला या प्रकरणामुळे त्रास होवू नये म्हणून संबंधित पालीस ठाणे यांना तसे कळवावे, ही विनंती.

मार्फत,

पोलीस उपनिरीक्षक,
पोलीस ठाणे, गोंदी,
ता. अंबड, जि. जालना."

. English translation of the said complaint reads as under:-

"

Date:02.09.2023

To,
The Police Sub Inspector,
Police Station, Gondi,
Tal-Ambad, Dist-Jalna.

Sub: Regarding registering a case against Shri Devendra Fadanvis, Home Minister, Maharashtra State, in the case of Mauje Antarwali Sarati, Taluka-Ambad, District-Jalna, after conducting a thorough investigation.

Reference: News dated 1st September 2023, spread in various media regarding the incident of lathi-charge in Antarwali Sarati, Tal-Ambad, District-Jalna.

Sir,

With the above mentioned subject, I seriously complain about that Manoj Jarange was on a hunger strike to get Maratha reservation through democratic means in the village of Antarwali Sarati, Taluka-Ambad,

District-Jalna. This agitation was not tolerated by Shri Devendra Fadnavis, Minister of State for Home Affairs, Maharashtra State. Therefore, he conspired to create a riot in this place and tried to kill the people here alive, and ordered his police personnel to lathi-charge and fire. And many people were seriously injured in this, so a case should be registered against him as above.

Also, a case was registered against the then Home Minister Anil Deshmukh even when he was the Home Minister. He had also spent a few months in jail. Therefore, since the law is same for everyone, in present case, investigation should be made against Shri Devendra Fadnavis, Home Minister, Maharashtra State, and a case should be registered against him for conspiring to create riots and trying to kill people. It is prayer.

If not, we should appeal to the Honourable Court.

Yours faithfully,

Sd/-

Virendra Sitaram Wagh,
RTI Activist, Ward No.6,
H. No.71, At Post-Khultabad,
Tal-Khultabad, District-Aurangabad.

Copy to:

1. Your Excellency, the Hon'ble Governor, Maharashtra State, Mumbai, is requested to kindly look into the above matter and take appropriate action as it is serious.

Note: Please inform the concerned Police Station so that I do not get involved in this matter.

Through:
PSI, Police Station, Gondi,
Taluka-Khultabad, District-Aurangabad."

(Translated by Senior Translator and Interpreter,
High Court of Bombay, Bench at Aurangabad)

7. Perusal of the said complaint would show that it was only against respondent No.3. and not even against respondent No.4. Name of respondent No.4 has not been reflected. Another fact is that the said complaint is as cryptic as it is and the source of information of the petitioner is not disclosed. The FIR cannot be lodged on the basis of a cryptic information. When and how conspiracy was hatched up, has not even been stated and therefore, it cannot be stated on the basis of the said complaint taken as it is, that any cognizable offence has been made out. When the complaint is not making out any cognizable offence, the registration of the same is not mandatory. The decision in ***Ramesh Kumari vs. State (NCT of Delhi) and others***, (supra), is on the point regarding mandatory provisions of Section 154 of the Code of Criminal Procedure when the information is disclosing cognizable offence.

8. Definitely, there would be, in certain case, police atrocities. However, unless the details of police atrocities with name and how those atrocities have been committed are given, further things cannot be ordered. Certainly, the observations in ***Ramlila Maidan Incident in Re***, (supra), are binding on this Court,

however, it can be seen that before the Hon'ble Supreme Court complete facts were placed. The Constitution of India, certainly, gives freedom to protest to the citizens but it is with restrictions. This has also been stated in *Ramlila Maidan Incident in Re*, (supra).

9. The fact which is coming on record is that two offences are already registered and the investigation thereof is going on. Yet, if the petitioner was of the opinion that there should be another FIR which he should lodge, then the FIR giving complete details ought to have been given or tried to be given and then if it is not recorded then he was supposed to adopt the procedure that has been laid down in *Priyanka Srivastava and another vs. State of UP and another*, (supra). There is no explanation in the entire Petition, as to why the petitioner has had not taken the steps as contemplated under *Priyanka Srivastava and another vs. State of UP and another*, (supra).

10. Here, the petitioner prays for registration of the FIR, however, we would like to rely on *Sakiri Vasu Vs. State of Uttar Pradesh and others, 2008 (2) SCC 409*, which was then followed in *T.C. Thangaraj vs. V. Engammal & others, 2011(12) SCC 328*,

Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and others, 2016(6) SCC 227 and M. Subramaniam and others vs. S. Janaki, 2020(16) SCC 728. In ***Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and others***, (supra), a note has been taken of the decision in ***Sakiri Vasu Vs. State of Uttar Pradesh and others***, (supra), wherein it has been observed that:

" If a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court Under Article 226 of the Constitution of India, but to approach the Magistrate concerned Under Section 156(3) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, prima facie, satisfied he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter."

11. In ***Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and others***, (supra), it is then specifically observed that:-

" We have said this in Sakiri Vasu case because what we have found in this Country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation."

. It has been further observed that:-

" We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the concerned Magistrate Under Section 156(3), Code of Criminal Procedure, and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation."

12. Note of *Ramesh Kumari vs. State (NCT of Delhi) and others*, (supra) was taken in *T.C. Thangaraj vs. V. Engammal & others*, (supra) and it has been held that the two-Judge Bench decision in *Ramesh Kumari vs. State (NCT of Delhi) and others*, (supra) will have to be now read in the light of the principles laid down by the Constitution Bench of the Hon'ble Supreme Court in *State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal and others*, [(2010) 3 SCC 571, and then in *T.C. Thangaraj vs. V. Engammal & others*, (supra), the decision in *Sakiri Vasu Vs. State of Uttar Pradesh and others*, 2008 (2) SCC 409, (supra) was relied upon.

13. Recently in *Ranjit Singh Bath and another vs. Union Territory Chandigarh and another*, 2025 LiveLaw (SC) 329

(Criminal Appeal No.4313 of 2024, decided on 6th March 2025 by the Hon'ble Supreme Court), it has been observed that, "Before a complainant chooses to adopt a remedy under Section 156(3) of the CrPC, he must exhaust his remedies under sub-Sections (1) and (3) of Section 154 of the CrPC and he must make those averments in the complaint and produce the documents in support." The law laid down in *Priyanka Srivastava and another vs. State of UP and another*, (supra) has been reiterated. Therefore, when a procedure has been set, we do not take this to be a fit case where we should exercise our constitutional powers under Article 226 of the Constitution of India to grant any reliefs.

14. The Writ Petition stands dismissed at the threshold.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/MAR25