

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2203 OF 2026**

Yash Nensee and Ors.

.. Petitioners

Versus

State of Maharashtra and Anr.

.. Respondents

-
- Mr. Niranjan Mundargi, a/w. Kishor Patil, Jagdish G. Arawad Reddy, Keral Mehta and Ashwini Jadhav Advocates for Petitioners.
 - Mr. Nitin Gaware Patil a/w. Harsh Rathod. Advocates for Respondent No.2
 - Mr. Shishir Hiray, CPP a/w. Sukanta A. Karmakar, APP for Respondent No.1 – State.

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 10, 2026.

P.C.:

1. Heard Mr. Mundargi, learned Advocate for Petitioners, Mr. Gaware Patil, learned Advocate for Respondent No.2 and Mr. Hiray, learned CPP for Respondent – State.

2. Present Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 by Petitioners seeking quashing of FIR No.04 of 2020 registered with Santacruz Police Station on 01.01.2020 (for short “**FIR**”) for offences punishable under Sections 323 and 324 read with 34 of Indian Penal Code, 1860 (for short “**IPC**”).

3. On 03.09.2026 after hearing the Petitioners and Respondent No.1 – the following order was passed

“1. Heard Mr. Mundargi, learned Advocate for Petitioners and Mr. Hiray, learned CPP for Respondent No.1 – State.

2. The Petitioners have approached this Court for quashing of First

Information Report No.4 of 2020 registered at Santacruz Police Station under Sections 324 and 323 read with Section 34 of Indian Penal Code, 1860.

3. Prima facie, it is seen that on a very trivial and petty issue, which is laced with mistaken identity, the Petitioners have been indicted while they were having a house party. It is borne out from the record that the Petitioners as well as the Complainant are having family relations and cordial relations with each other and are known to each other.

4. The parties before the Court were all students at the then time and have now grown up in life and have moved forward. The house party was infact of common school friends and innocuous reason emanated from verbal argument led to a quarrel. There is simple injury, which has been caused due to wearing of a (dMk) having worn on the person of the Accused No.1 who is a Punjabi as informed by Mr. Mundargi.

5. He has taken me through the papers appended to the Petition which include the credentials of the Petitioners and they having now settled in life.

6. An arguable case is made out by Mr. Mundargi for immediate intervention of this Court in such matters since the Petitioners before the Court are young offenders and it is the duty of the Court to intervene in such matters so that the young offenders are given a chance in their life to carry on and resurrect their life without the ignominy of criminal prosecution or criminal proceedings.

7. Hence, issue notice to Respondent No.2. Learned CPP enters appearance and waives service on behalf of Respondent No.1 – State.

8. Humdast permitted. In addition to Court's notice, Petitioners are directed to serve the Respondents a copy of this order and Petition and inform about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on the next adjourned date.

9. Compliance of this order be made. It is clarified that if Respondent No.2 is served with a copy of this order and the Petition, and if he does not remain present this Court, shall not await his presence any further and decide the Petition in accordance with law on the next adjourned date at the time of admission itself.

10. Stand over to 10th September, 2026. To be placed under the caption 'First on Board'."

4. Today Mr. Gaware Patil, learned Advocate enters appearance and has addressed the Court. I have considered his submissions.

5. There are 3 Petitioners before me who are all young offenders and students. Complainant is also a student. The incident

occurred on 31.12.2019 in the intervening night and on the eve of New Year's party on 01.01.2020. A house party was arranged by a common friend of Petitioners and Complainant. At about 2:30 am when the party was going on, a verbal altercation and argument ensued resulting in a scuffle between Petitioner No.1 and Complainant. Prosecution case is that Petitioner No.1 inflicted a blow with a steel bangle (कड़ा) on Complainant's head leading to simple injury and bleeding. The Injury Certificate is at page No.39 which classifies the injury as simple. Reading of FIR and Complainant's statement, *prima facie* shows that while the party was going on in a dimly lit room, Complainant back slapped Petitioner No.2 assuming him to be his friend in a case of mistaken identity which led to a verbal altercation leading to the incident. Complainant and all 3 Petitioners were 19 years old at the time of incident. Initially it is seen that FIR was lodged only against Petitioner No.1, but Complainant thereafter sent legal notices and made allegations against the Investigation Officer and even filed Writ Petition in this Court due to which it is argued by Mr. Mundargi that offences under Section 323 and 34 of IPC were added and Petitioner Nos. 2 and 3 were also implicated as co – accused persons in the FIR.

6. The academic credentials of all 3 Petitioners are placed before me. Petitioner No.1 has been admitted to the degree course of BA Ordinary Global Management (Leadership & Management) in

Regent's University London in June 2023 and Mr. Mundargi informs the Court that he has completed the same. Petitioner No.2 has obtained a degree in Bachelor of Science in Business Administration from Garden S. Marshall School of Business, University of Southern California whereas Petitioner No.3 has been an ISCE student of Avlon Heights International School, Navi Mumbai and has also taken further academic pursuits. Petitioners are all 25 years old today. Petitioners persuade the Court to quash the present FIR. I have heard the submissions on behalf of the Complainant expressing concern through his Advocate.

7. I have perused the material placed before the Court and the record of the case. The FIR itself states that Complainant back slapped the Petitioner No.2 which led to the incident in question. There is no premeditation or any conspiracy involved neither Petitioner Nos. 2 and 3 conspired with Petitioner No.1 to cause harm to the Complainant. It is *prima facie* seen that slapping of the Petitioner No.2 by Complainant on his neck was a clear case of mistaken identity since Complainant mistook the Petitioner to be one of his close friends whom he could not identify in the dark when the party was on and all present were grooving to the music. This incident occurred in a dimly lit room where the party was going on. Thereafter Petitioner No.1 intervened and the scuffle took place leading to injury. There is no *mens rea* involved *qua* all 3 Petitioners and therefore levy of charges

under IPC cannot be sustained in such circumstances. Petitioners and Complainant equally are highly educated persons hailing from respectable and highly educated families having no antecedents.

8. Complainant and Petitioners were all celebrating New Year during which the incident in question occurred at the spur of the moment. Independent witness statements of friends who had attended the house party and who were witnesses to the incident in question have been recorded and considered by me. In my overall view, after considering the aforesaid, I am of the opinion that this is a fit case for quashing of FIR. In the facts and circumstances of the present case Complaint of Respondent No.2 is not at all sustainable and allegations made in the FIR do not warrant application of the stringent provisions Sections 323 and 324 read with 34 IPC at all.

9. Considering Petitioners' age, if Complaint, FIR bearing No.04/2020, Chargesheet dated 13.11.2021 along with Criminal Case being Police Case No. PW/7102415/2021 filed in 71st Metropolitan Magistrate, Bandra against them is quashed, Court is hopeful that their family will undoubtedly do their duty to make every effort and attempt to reform and aid Petitioners in leading a reformed life rather than keep this proceeding pending and expose them to a criminal outlook. However on the flip side, if a chance is given to the Petitioners because of their young ages by quashing the Complaint, FIR, Chargesheet and Criminal Case mentioned above registered

against them, then there is a possibility that they will be remorseful and repent in retrospect. This is a chance required to be taken by the Court because punishment has to be believed to be inflicted for a reformatory result rather than being punitive in nature.

10. This Court feels that reform of the accused persons needs to be considered especially when age of the accused persons are young so that they get an opportunity / or are given an opportunity to reform, and earn their livelihood honorably from the perspective of social integration. This is a chance which the Court must take considering the young age of the accused persons. The age of Petitioners is very young. They all are highly educated and may be still pursuing their education. If these proceedings are continued and if the Petitioners are tried in accordance with criminal law, remanded to custody, incarcerated in prison and if convicted remain in prison then there is every possibility that they might lose faith in the institution and society at large and may tread the path of criminality or would waste their lives.

11. There are several harms of incarceration which are inflicted disproportionately on the youth. This is the reason why Court feels that any / every semblance of a chance towards a reformatory approach should be adopted, especially in the case of young offenders when faced with such quashing Petitions. Hence every opportunity or to that extent risk should be constructively taken by the Court in the

case of young offenders – accused persons before committing such accused to criminal proceedings and give such accused an opportunity to become good citizens in the Society. These observations are only in the view of the young age of the Petitioners before me and it is only a means to explore an alternative to subject them to criminal proceedings any further so that Petitioners can become good citizens.

12. Section 482 of the Criminal Procedure Code, 1973 conferred inherent powers on High Courts to pass such orders as are justified to give effect to any order in the Court, prevent abuse of process of any Court or secure the ends of justice. In the BNSS this provision stands incorporated with Section 528 which substantially reproduces the language and intent of Section 482 of the CRPC, 1973 High Courts invoke this provision to step in where cases have been instituted with *malafide* motives or to harass the accused person thereby avoiding procedural harassment. It empowers Court to dismiss FIRs or criminal proceedings if there is no *prima facie* case or evidence against the accused person/s or if orders are made in violation of the principles of natural justice. The exercise of such powers under Section 482 of CRPC and now Section 528 of BNSS remains discretionary and varies from case to case.

13. In *State of Harayana vs Bhajan Lal*¹ the Supreme Court laid down model categories and guidelines in paragraph No. 102 of the

1 1992 AIR 604

said judgment in which the FIRs can be quashed. The Supreme Court has further asserted that power under Section 482 is an acknowledgment of "powers inherent" and not the source of powers additional. It has held that even non compoundable offences can be quashed where necessary. It has held that High Courts have to decide whether the prosecution of an offence would further or be against the interest of justice. It is also held that grievous offences such as murder, rape, and dacoity cannot ordinarily be quashed even after settlement because they involve societal implication.

14. In the above context, when parties settle their private dispute or the *lis* between them and the offence is not heinous or does not impact the society at large, the Court can consider such request. In such a case awarding costs for putting the criminal law into motion on the act of the accused persons can be considered by Court which can impose costs on the parties.

15. I am of the firm opinion that imposition of costs is required to be levied for three main reasons viz., wastage of public resources, consumption of valuable judicial time and for deterrence against vexatious litigation. This is because after criminal machinery is set into motion, the Police Department is forced to take cognizance, conduct investigations, attend courts, deploy personnel, collect evidence and draft chargesheets, all using public funds/ public

exchequer. Equally substantial judicial time of the Trial Courts and Sessions Courts is wasted for handling a case, presentation of a case, issuance of summons, scheduling of trial dates, appointment of prosecutors and their fees, etc. and ultimately if quashing is allowed such judicial time stands completely wasted, which could have otherwise been used for genuine Trial Court matters/ litigation in one way such matters result in clogging the legal system and lead to humongous pendency which becomes difficult to tackle.

16. Another aspect to consider for imposing costs is that it curbs the growing trend of filing strategically exaggerated criminal complaints (especially matrimonial or commercial disputes) simply to force financial and legal settlements. In a given case made out on merits of the matter, even the Complainant can be put to costs while considering a quashing Petition purely on merits depending upon the facts of each case before Court. In some strong circumstances, even the State machinery can be put to costs if a purely civil dispute between parties strongly emanating from the facts on record is registered as criminal case and given the flavor of criminality. This Court is also equally conscious about not imposing costs blindly or mechanically if a particular party is not found to be remiss or at explicit fault for abusing the law, as also conscious about heinous offences impacting the society at large while considering consent quashing.

17. Applying the aforesaid principles to the facts of the present

case, I am of the opinion that all 3 Petitioners for their actions resulting in the complainant invoking criminal proceedings and now both the parties seeking quashing by consent, the Petitioners should pay costs. Hence, the 3 Petitioners are directed to pay costs of Rs.15,000/- each towards the Corpus of **A.K. Munshi Yojana** a trust which runs medical centres, vocational training centres and which also runs a Special School called **J.T. Sheth Mandbuddhi Vikas Kendra**, imparting education and training to the needs of 150 special children in the field of Education (Classes for 6 to 18 years), early intervention (upto 6 years) and vocational training (18 years above) having its school address and building at A.K. Munshi Yojana Chowk, 3rd Panjarapole Lane, C.P. Tank, Mumbai – 400 004 [Contact Nos. 22425513 / 22423654] registered under the Society Registration Act, XXI of 1980 under No. : 387/81 GBBSD and the Public Trust Act, XXIX of 1950 under No. F-6809. RCI Reg. No. 0163 within a period of 2 weeks from the date of uploading of this order. All Petitioners are present in Court and through their learned Advocate agree to pay the aforesaid costs amount to the charity.

18. List the Writ Petition for compliance of the order regarding payment of costs on **13th October 2026**.

19. Advocate for Petitioners shall remain present and show compliance on behalf of all Petitioners on the returnable date for compliance. If they do not remain present and there is non-compliance

of this order, Court will pass appropriate order for recall of this order, which shall be noted by the Petitioners.

20. In view of the above observations and findings, the Writ Petition stands allowed in terms of prayer clauses “(a)” and “(b)” of the Petition which read as thus:-

“(a) This Hon'ble Court be pleased to issue writ of certiorari or any other appropriate writ, order of direction in the like nature under Article-227 of Constitution of India R/w Sec. 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, thereby quashing and setting aside the impugned FIR bearing No.04/2020 registered with Santacruz Police Station on 01.01.2020 for offences alleged U/secs. 324 & 323 R/w Sec. 34 of Indian Penal Code, 1960.

“(b) This Hon'ble Court be pleased to issue writ of certiorari or any other appropriate writ, order of direction in the like nature under Article-227 of Constitution of India R/w Sec. 528 of Bharatiya Nagarik Sureksha Sanhita, 2023, thereby quashing and setting aside the impugned consequential Charge-sheet dated 13.11.2021 submitted in the Court of learned Metropolitan Magistrate, 71 Court, Bandara (East), Mumbai and consequential Police Case No. PW/7102415/2021 pending in the court of learned Metropolitan Magistrate, 71 Court, Bandara (East), Mumbai arising out of FIR bearing No.04/2020 registered with Santacruz Police Station on 01.01.2020 for offences alleged U/secs. 324 & 323 R/w. Sec. 34 if Indian Penal Code, 1860.”

21. Further, I direct all 3 Petitioners to file an Undertaking on Affidavit in this Court within a period of 3 weeks stating that they shall not in any manner attempt to harass or settle any kind of score with the Respondent No.2 - Complainant in view of present Writ Petition having been allowed and Complaint / FIR bearing No.04/2020 and Chargesheet dated 13.11.2021 along with Criminal Case being Police Case No. PW/7102415/2021 filed in 71st Metropolitan Magistrate, Bandra having been quashed and set aside. If Petitioners indulge in any kind of harassment of the Complainant due to the above reason then they shall be proceeded against with by the

law enforcement agencies in accordance with law. This order is passed in order to allay the fear expressed by the learned Advocate Mr. Nitin Gaware Patil on behalf of the Complainant and to prevent any backlash of revenge by the Petitioners. I must also appreciate the conduct with which the present case was argued by Mr. Nitin Gaware Patil, learned Advocate appearing on behalf of Respondent No.2 – Complainant as also Mr. Mundargi, learned Advocate for the Petitioners in enabling the Court to decide the present Petition especially in view of the fact that parties before Court were young offenders and it is the duty of Court to ensure that young offenders are given a chance to resurrect their lives notwithstanding any slip that may have occurred in exuberance of their youth so that they can become good citizens and serve the society.

22. Writ Petition is allowed and disposed in the aforementioned terms.

23. List the present Petition for **Compliance** on **13th October 2026**.

[MILIND N. JADHAV, J.]

Ajay

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by RAVINDRA
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