

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4962 OF 2015

Ashok Harichandra Rajiwade & Anr.	...Petitioners
vs.	
The State of Maharashtra & Ors.	...Respondents

Mr.Subhash Jha i/b. Subhash Hulyalkar for Petitioners.
Ms.S.D. Shinde, APP for the State.
Mr.K.S. Patil with Shailesh Chavan for Original complainant.

CORAM : RANJIT MORE & S.C. GUPTE, JJ.

22 JANUARY 2016

P.C. :

Heard Mr.Jha, learned Counsel for the Petitioners and Ms.Shinde, learned APP for the State.

2 The petition is filed for following reliefs :

“(a) that this Hon'ble Court may be pleased to issue a writ of certiorari and/or any other appropriate writ, order and/or direction in the nature of certiorari thereby calling for the investigation papers concerning FIR No.187 of 2015 registered with Lonavala (Rural) Police Station, Pune and after examining the legality, validity and/or propriety of the Petitioners being arraigned therein as an accused be pleased to direct deletion of the names of the petitioners from the said FIR;

(b) pending the hearing and final disposal of this petition, all further proceedings concerning FIR No. 187 of 2015 registered with Lonavala (Rural) Police Station, Pune be stayed qua the Petitioners and may be further pleased to direct the Lonavala

(Rural) Police Station, Pune to conduct investigation in the light of the facts furnished by the Petitioners in their representations dated 07.12.2015 and 10.12.2015 to Lonavala (Rural) Police Station and other higher authorities;

(c) interim and ad-interim relief in terms of prayer clause (b) above be granted.”

3 The FIR No.187 of 2015 is registered by the Lonavala police station at the instance of one Shyam Hemant Rasal for the offence punishable under Sections 302 and 307 read with 34 of IPC. The FIR discloses the role of the Petitioner. The investigating officer has also recorded statement of Lahu Shelke, the injured eye witness, who has attributed a major role to the petitioner.

4 Mr.Jha, learned Counsel for the Petitioners, submits that the Petitioners were not there at the scene of offence and they were somewhere else. In short, the Petitioners are raising defence of *alibi*. It is settled position of law that the defence of the accused cannot be considered at the stage of investigation. We, therefore, are not inclined to accept the submission. Mr.Jha also relied upon order dated 29 April 2011 passed by a Division Bench of this Court in Writ Petition No.1148 of 2011. The facts of this case are distinguishable. Be that as it may, this order cannot cited as a precedent.

5 Taking into consideration the totality of the facts and circumstances of the case, we are not inclined to entertain the petition. The petition is devoid of any merit. The same is dismissed.

(S.C. GUPTE, J.)

(RANJIT MORE, J.)