

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.778 OF 2017

- 1) Rakesh s/o Rajendra Gaikwad,
Age-24 years, Occu:Education -
Studying in 3rd year of
Mechanical Engineering Course,
R/o-Government Hostel, N-8, CIDCO,
Aurangabad,
- 2) Rupesh s/o Parmeshwar Gutte,
Age-28 years, Occu:Private Service
as Engineer, R/o-Chhatrapati Nagar,
Beed Bypass Road, Aurangabad,
- 3) Rohit s/o Ramesh Gitte,
Age-24 years, Occu:Education -
Studying in Final year of B.E.
Mechanical, R/o-MIT Boys Hostel,
Beed Bypass, Aurangabad,
- 4) Maruti s/o Venkatrao Deokate,
Age-23 years, Occu:Education-
Studying in Final year of B.E.
Mechanical, R/o-MIT Hostel,
Beed Bypass, Aurangabad,
- 5) Rishikesh s/o Dinkar Sanap,
Age-27 years, Occu:Education-
Studying in Final year of B.E.
Civil Engineer,
R/o-Mahalaxmi Colony,
N-2, CIDCO, Aurangabad,

- 6) Amol s/o Jalindarrao Giri,
Age-24 years, Occu:Private Service
as a Engineer, R/o-Shivaji Nagar,
Majalgaon, Tq-Majalgaon,
Dist-Beed.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through the Secretary,
Home Department, Mantralaya,
Mumbai,
- 2) The Commissioner of Police,
Aurangabad City, Aurangabad,
- 3) Dy. Commissioner of Police,
Circle-2, Aurangabad City,
Aurangabad,
- 4) Bhikchand Khanduji Ghitre,
Age-55 years, Occu:Service as
Sub-Inspector, R/o-CIDCO
Police Station, Aurangabad.

...RESPONDENTS

...

Mr.J.M. Murkute Advocate for Petitioners.
Mr.D.R. Kale, A.P.P. for Respondent
Nos. 1 to 3.

...

**CORAM: S.S. SHINDE AND
MANGESH S. PATIL, JJ.**

DATE OF RESERVING JUDGMENT : 22ND NOVEMBER, 2017

DATE OF PRONOUNCING JUDGMENT: 5TH DECEMBER, 2017

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Writ Petition is filed with following prayers:

"B] The First Information Report No.0167/2017 dated 04/03/2017 registered at CIDCO (City) Police Station Aurangabad for the offence punishable u/s. 143, 341 of Indian Penal Code may kindly be quashed and set aside.

B-1] The charge-sheet No.225/17 dated 28/08/2017 filed by Assistant Police Sub-Inspector CIDCO Police Station

Aurangabad in relation to Crime No.167/2017 for the offence punishable u/s. 143, 341 of I.P.C. may kindly be quashed and set aside."

3. Learned counsel appearing for the Petitioners submitted that on 3rd March, 2017 there was birthday of Petitioner No.1 Rohit. At 10.30 p.m. the Petitioners were in Koyala Hotel for taking dinner. Police came there and thereafter Petitioners Rohit, Rupesh and Rishikesh were taken to the police station. Petitioner No.4 Deokate went to the police station at about 12.00 midnight for making inquiry about his friends Rohit and others. At that time Rohit was taken in the custody by the police. Relying upon the grounds taken in the Petition, learned counsel submitted that the Petitioners have not committed any of the offence as alleged and they are falsely involved in the crime by making false allegations and creating false record against the Petitioners.

4. Learned counsel further submitted that even if the allegations in the F.I.R. are taken at its face value and read in its entirety, an alleged offences are not disclosed. It is submitted that the Petitioners are students and they are falsely involved in the criminal case, there would be danger to their future career. No complaint was filed by any person stating that the Petitioners have blocked the public way by using criminal force.

5. During the pendency of this Petition, charge-sheet came to be filed and therefore the Petitioners have amended the Petition. Referring to the grounds taken out by the amendment, learned counsel submitted that in the First Information Report (for short "FIR") numbers of some vehicles were recorded as belonging to the Petitioners, however during investigation police came to know that owners of those vehicles were some other

persons. While filing charge-sheet, the police had given clean cheat to those persons and their names are shown as witnesses in this case. No fair investigation is conducted by the Investigating Officer and perusal of the charge-sheet shows that the Petitioners are falsely involved in the bogus case. It is further submitted that police had not disclosed true facts in the charge-sheet. In fact Petitioner No.1 Rakesh was not on the spot but he was in the Government hostel. Therefore, it is prayed that the Petition may be allowed.

6. On the other hand, learned A.P.P. appearing for the State relying upon the allegations in the F.I.R. and accompaniments of the charge-sheet, submits that there is sufficient material collected by the Investigating Officer which would show the involvement of the Petitioners and therefore the Petition may be rejected.

7. We have given careful consideration to the submissions of learned counsel appearing for the Petitioners and learned A.P.P. appearing for the State. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, allegations in the F.I.R., charge-sheet and its accompaniments. Upon careful perusal of the allegations in the F.I.R., it is alleged that for celebrating the birthday of Petitioner Rohit, all the Petitioners have made unlawful assembly at Connaught Place, Cidco, Aurangabad and parked their vehicles on the road and thereby caused obstruction to the traffic. Upon careful perusal of the allegations in the F.I.R. and also the statement of witnesses, in our opinion, the alleged offences are not disclosed as against the Petitioners. Learned counsel invited our attention to the affidavits filed by the Petitioners. Except Petitioner Rakesh, all other Petitioners have admitted that on 3rd March, 2017 they gathered at Connought Place, Aurangabad to

have a joint dinner to celebrate birthday of their friend - Rohit and it is further submitted that they did not gather there to commit any offence. Thus, it appears that though the Petitioners gathered at Connought Place, their intention was to celebrate birthday of their friend and it was not their intention to commit any mischief or criminal trespass or any offence. Upon perusal of the entire documents placed on record, it appears that no document is placed on record to show that the Petitioners have wrongfully restrained any person. Therefore, in our opinion, the alleged offences are not at all disclosed.

8. We find considerable force in the argument advanced by learned counsel appearing for the Petitioners that in the facts of the present case, keeping in view the fact that most of the Petitioners are students having their future career ahead, and the contents of the affidavits filed by the Petitioners, lenient view needs to be

taken and therefore we are inclined to allow this Petition. Upon perusal of the contents of the charge-sheet and its accompaniments, we are of the opinion that continuation of further proceedings on the basis of the F.I.R. would be an abuse of process of law and exercise in futility. In that view of the matter, an inevitable conclusion is that the First Information Report and the consequential charge-sheet, deserve to be quashed and set aside.

9. In the result, the First Information Report and the consequential charge-sheet and further proceedings are quashed and set aside. Rule is made absolute in terms of prayer clause "B] and B-1]" to the Petition. The Writ Petition is allowed and the same stands disposed of, accordingly.

[MANGESH S. PATIL, J.]

[S.S. SHINDE, J.]