

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.3897 OF 2017

1. Yogesh s/o.Arjun Gite,
Age: 36 Years, Occu: Agri.
2. Ankit s/o.Govind Asawa,
Age: 21 years, Occu: Agri.
3. Krishna s/o.Govind Asawa
Age: 25 Years, Occu. Agri.
4. Govind s/o. Ratanlal Asawa,
Age: 53 Years, Occu: Agri.
5. Tarabai w/o. Ratanlal Asawa
Age: 74 years, Occu. Nil.
6. Santosh s/o. Sahebrao Gadekar,
Age : 24 years, Occu. Driver,

All R/o. Songaon, Tq.Rahuri,
Dist. Ahmednagar.

[Application of applicant nos.
1 to 4 & 6 dismissed as withdrawn
as per Court's Order dt.10.08.2017]

APPLICANTS

VERSUS

1. The State of Maharashtra,
Through Police Station,
Rahuri, Dist. Ahmednagar.
2. Purushottam s/o. Ratanlal Asawa,
Age-52 years, Occu-Agri.
R/o.Songaon, Tq.Rahuri,
Dist. Ahmednagar.

RESPONDENTS

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Mr.Kunal A.Kale, Advocate for the applicants
Mr.A.R.Kale, APP for Respondent – State
Mr.Sandip R.Andhale, Advocate for respondent
no.2.

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**CORAM: S.S.SHINDE &
MANGESH S.PATIL, JJ.**
DATE : 11.10.2017

ORAL JUDGMENT: [Per S.S.Shinde, J.]

1] Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

2] So for as applicant nos.1 to 4 and 6
are concerned, application on their behalf
has been withdrawn on 10th August, 2017.
Therefore, we are considering the case of
applicant no.5 Tarabai w/o.Ratanlal Asawa.

3] Learned counsel appearing for the
applicants submits that the age of applicant
no.5 Tarabai Asawa is 74 years. No any
specific allegations are made against her.
No specific role is attributed to her. Even

if the allegations in the First Information Report [for short 'FIR'] are taken at its face value and read in its entirety, the alleged offences as against applicant no.5 are not disclosed. The allegations in the FIR are inherently improbable since the applicant no.5 is a old age lady. Therefore, he submits that the application may be allowed.

4] On the other hand, learned APP appearing for respondent-State and learned counsel appearing for respondent no.2 relying upon the allegations in the FIR and also statements of the witnesses recorded during the course of investigation, submit that, the presence of applicant no.5 Tarabai Asawa is stated by the witnesses. There are specific allegation in the FIR and also role is attributed to her by the witnesses. The Investigation Officer has collected sufficient material during the course of investigation and trial can proceed against

the applicant no.5. Therefore, they jointly pray that the application may be rejected.

5] We have carefully perused the allegations in the FIR and also charge sheet and accompaniments of the charge-sheet. So far as applicant no.5 Tarabai is concerned, it is not disputed by the respondents about the age of applicant no.5; who is 74 years old as mentioned in the cause title of the application. Apart from it, there is no any specific overt act attributed to her. There are general allegations. In our opinion, since applicant no.5 Tarabai Asawa is old age lady, the allegations against her are inherently improbable, therefore, keeping in view the exposition of law by the Supreme Court in the case "State of Haryana V/s Bhajan Lal¹" held that, in following categories the Court would be able to quash the F.I.R.

1 AIR 1992 SC 604

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.

2. *Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
3. *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
4. *Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
5. *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in*

the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

6] The case of applicant no.5 Tarabai Asawa be covered under category nos.1 and 5 of the aforesaid categories. Therefore, the application is allowed to the extent of applicant no.5—Tarabai Ratanlal Asawa. Rule is made absolute on above terms.

7] The observations made herein above are *prima facie* in nature and confined to the adjudication of this application and the trial Court shall not get influenced by the above mentioned observations during the course of trial.

8] Needless to observe that the

prosecution can proceed against other
applicant nos.1 to 4 and 6.

[MANGESH S.PATIL]
JUDGE

[S.S.SHINDE]
JUDGE

DDC