

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 745 OF 2018

Sanjay S/o Gopal Pawar,
 Age : 51 Years, Occ. Business,
 R/o. Delhi Gate, Patange Galli,
 Tq. & District Ahmednagar. ..PETITIONER

VERSUS

- 1] State of Maharashtra,
- 2] Sanjay Ratnakar Jhinje
 Age : 52 Years, Occ. Business,
 R/o. House No. 552,
 Near Nehru Market, Chitale Road,
 Ahmednagar. ..RESPONDENTS

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Advocate for Applicant : Mr. N. V. Gaware
 APP for Respondents: Mr. D.S. Jape
 Advocate for respondent no. 2 : Mr. N. B. Narwade

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CORAM :T.V. NALWADE AND
SMT.VIBHA KANKANWADI,JJ.
DATE :28th SEPTEMBER, 2018.

JUDGMENT(Per T.V. NALWADE, J] :-

Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

- 2] The proceeding is filed for relief of quashing and setting-aside the FIR No. 492/2013 registered with Topkhana Police Station, Ahmednagar for the offences punishable under Sections 143, 147, 148, 325, 323, 504, 506 read with Section 149 of the Indian Penal Code and

under Section 4 read with Section 25 of the Arms Act.

3] The relief of quashing of Criminal Case bearing Regular Criminal Case No. 757 of 2017 presently pending in the Court of the learned Judicial Magistrate First Class, Ahmednagar is also claimed. Petitioner is one of the accused in the said case.

4] This Court has carefully gone through the contents of the FIR and the material collected by police during the investigation. FIR was given by respondent Sanjay Jhinje. It is in respect of the incident dated 24.10.2013 which took place at about 10.30 a.m. The first informant approached police on 25.10.2013 and the crime came to be registered at 9.15 p.m.

5] The allegations are made that the family of the first informant has neighbour by name Rajendra Sawant. Rajendra Sawant and his family members are the other accused in the case. The allegations are made that on 24.10.2013 at about 10.30 a.m when the first informant was present in the house with his father he heard noise and so he came out. The construction activity in the house of the first informant was going on and his family had stored steel brought for construction in front of their house. They noticed that Ravindra Sawant, Amit Sawant and

Aashish Sawant were removing steel belonging to first informant and they were loading it in the Tempo. The allegations are made that when the first informant questioned to these persons, Ravindra and Amit fetched swords from their house and Aashish fetched base ball stick. The allegations are made that Ravindra gave blow of axe on his head. Aashis gave a blow of base ball stick on his back and when Ratnakar, the father of the first informant came forward, he was assaulted by using sword by Amit on his right leg. The allegations are made at that time Rajendra Sawant and one Pawar came there and they were holding iron bars and both of them first said that Sanjeev, first informant needs to be finished and then they attacked the first informant and his father by using iron bars.

6] The material collected shows that father of the first informant gave similar statement. However, the statements of the other neighbours like Vaibhav, Mune and Rajendra Choudhary show that they did not notice present applicant on the spot. The injury certificate in respect of first informant and his father are produced and they show that each of them sustained one incise wound. Ratnakar sustained incise wound on right lower leg which was fresh and simple. He was examined on 24.10.2013 at 12.30 p.m Sanjay has sustained one incise wound over forehead and it was also fresh but simple. Thus only two injuries were sustained by the first informant and his father. This

circumstances shows that there is exaggeration.

7] This Court asked the learned counsel for the first informant the motive for present applicant, for getting involved in the offence. There was no specific reply on that. In the FIR also no reason is given as to why applicant who is apparently not relative of the Sawant family was there. Learned counsel for the first informant argued much on circumstances that when the incident took place in the year 2013 charge sheet was not filed till the year 2017. He showed the record of the complaints made by the family of the first informant as police was not filing charge sheet. It appears that after raising the grievance, charge sheet came to be filed. Though this circumstance is there, that circumstance cannot make any difference in respect of the case filed against the present applicant. In view of the nature of the material available as against the present applicant which is quoted above this Court hold that it will be abuse of process of law if he is asked to face the trial of the case. In the result, the Writ Petition is allowed. Relief is granted to the present petitioner in terms of prayer clause "B". Rule made absolute in those terms.

[SMT.VIBHA KANKANWADI]
JUDGE

[T.V. NALAWADE]
JUDGE