

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

CRIMINAL WRIT PETITION 1619 OF 2016

1. Bhagwan S/o Tukaram Bade,
Age: 53 years, Occu. Headmaster,
Zilla Parishad Primary School,
Pathargavan (Bk),
Tq. Pathri, Dist. Parbhani.
2. Parmeshwar S/o Vyankoba Bade,
Age: 35 years, Occu. Agri,
R/o. Pandargaon,
Tq. Gangakhed, Dist. Parbhani.
3. Sarika W/o Sandeep Malve,
Age: 28 years, Occu. Education,
R/o. B.J. Medical College, Pune.
4. Dinesh S/o Bhagwanrao Bade,
Age: 25 years, Education,
Bairamji Jeejeeubhoy (B.J.) Medical
College, Pune.
5. Gayabai W/o Bhagwanrao Bade,
Age: 48 years. Occu. Household,
R/o. Bhandari Colony, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.
6. Vyankoba S/o Tukaram Bade,
Age: 55 years, Occu. Agri,
R/o. Bhandari Colony, Gangakhed,
Ta. Gangakhed, Dist. Parbhani.
7. Nagnath S/o Kashinath Bade,
Age: 42 years, Occu. Agri,
R/o. Bhandari Colony, Gangakhed,
Ta. Gangakhed, Dist. Parbhani.
8. Sharad S/o Chandrakant Takras,

Age: 25 years, Occu. Agri,
R/o. Bhandari Colony, Gangakhed,
Ta. Gangakhed, Dist. Parbhani.

9. Laxman S/o Sitram Bade,
Age: 60 years, Occu. Agri,
R/o. Bhandari Colony, Gangakhed,
Ta. Gangakhed, Dist. Parbhani.
10. Bhaskar S/o Namdeo Munde,
Age: 45 years, Occu. Agri,
R/o. Badwani, Tq. Gangakhed,
Dist. Parbhani.
11. Kashibai W/o Bhaskar Munde,
Age: 43 years, Occu. Household,
R/o. Badwani, Tq. Gangakhed,
Dist. Parbhani.
12. Limbaji S/o Baburao Gitte,
Age: 35 years, Occu. Business,]
R/o. Sarda Colony, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.
13. Vajinath S/o Eknath Bade,
Age: 45 years, Occu. Service,
R/o. Om Nagar, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.

... **PETITIONERS**

Versus

The State of Maharashtra,
Through The Investigation Officer,
Gangakhed, Tq. Gangakhed,
Dist. Parbhani.

... **RESPONDENT**

Mr.J.M.Murkute, Advocate for petitioners.
Mr.S.D.Ghayal,APP for Respondent

CORAM : MANGESH S. PATIL, J.

RESERVED ON : 21/02/2019.

PRONOUNCED ON :22/04/2019.

JUDGMENT :

1] Rule. The Rule is made returnable forthwith. Heard finally with the consent of the parties.

2] In this Petition under Articles 226 and 227 of the Constitution of India, the petitioners are impugning the common order passed by the learned Additional Sessions Judge, Gangakhed, Dist.Parbhani rejecting their applications (Exhibits 22 and 24) in Sessions Case No.30/2016 seeking discharge under Section 227 of the Cr.P.C.

3] Briefly stated the facts leading to the filing of the Writ Petition are to the effect that one Manchakrao Madhavrao Malve lodged the FIR at Gangakhed Police Station on 3/4/2015 on the basis of which Crime No.79/2015 was registered for the offences punishable under Sections 307, 365, 325, 427, 143, 149 of the IPC against the petitioners. He alleged that on that day at about 10.15 a.m. all the petitioners stormed into the hospital being run by his son by name Dr.Sandip. They were armed with sticks and an axe. They assaulted Dr.Sandip. When his brother Dipak tried to intervene, even he was assaulted. The furniture and articles in the hospital were damaged. Dipak was confined in a room. In the process, cash of Rs.20,000/- was removed from the pocket of Dr.Sandip, similarly his gold locket was snatched. He was dragged outside the cabin and was abducted in a jeep. It was also alleged that the petitioners forcibly attempted to administer poison to Dr.Sandip. The petitioners were arrested. The

investigation was completed and the charge sheet was filed. By way of two separate applications, the petitioners sought discharge under Section 227 of the Cr.P.C. The learned Additional Sessions Judge by the impugned order rejected both the applications. Hence this Writ Petition.

4] The learned advocate for the petitioners submits that in fact the petitioner no.3 was married to Dr.Sandip but there was a matrimonial dispute. The rest of the petitioners are her parents, brother and near relations. With a view to resume cohabitation the petitioners had gone to the hospital of Dr.Sandip. Instead of reacting to their request he and his family members assaulted the petitioners. On the basis of the FIR lodged by petitioner no.3 on the same day Crime No.80/2015 was registered against Dr.Sandip, his parents, brother and other relations. Therefore, the present FIR i.e. Crime No.79/2015 was lodged as a counter blast and attempt has been made to rope in as many relations of petitioner no.3 as possible.

5] There is a CCTV footage wherein only petitioners no.1 to 4 can be seen. The other petitioners have been falsely implicated. There is an entry in the Station diary dated 17/4/2015 that Dr.Sandip and his relatives have been pressurizing police. No overt act is attributed to petitioners no.2 and 6 to 13. Except one injury to Dr.Sandip the other injury sustained by him and the injury sustained by his mother Sunanda and brother Dipak are simple in nature. No poison was detected in the vomit which was got chemically analysed. In these circumstances, there is not enough material to reveal complicity of all the petitioners in commission of the crime and they deserve to be discharged. However, the learned Additional Sessions Judge has

overlooked all these aspects and has rejected the application without sufficient basis. The order is illegal and may be quashed and set aside and the applications (Exh.22 and 24) may be allowed.

6] The learned APP submitted that at this stage meticulous scanning of material is not to be resorted to. The scope of inquiry under Section 227 of the Cr.P.C. is limited in ascertaining whether there are sufficient grounds to proceed against the accused persons. The learned Additional Sessions Judge has pointed out sufficient circumstances which *prima facie* show involvement of the petitioners in commission of the crime. Minor discrepancies in the statements of the informant and witnesses need not be gone into at this stage. There are independent witnesses who have stated about occurrence of the incident and the Writ Petition may be dismissed.

7] I have carefully gone through the impugned order and the entire papers annexed to the charge sheet. One need not delve in the scope of an inquiry in an application filed under Section 227 of the Cr.P.C. for discharge. The law is far too well settled and the learned Additional Sessions Judge in his impugned order has referred to and relied upon three judgments of the Supreme Court which need not be repeated.

8] Even according to the petitioners, it is the petitioners no.1 to 4 who had entered into the hospital being run by Dr.Sandip who happens to be the husband of petitioner no.3. Admittedly, there has been a matrimonial dispute between the two. Some incident had taken place even according to the petitioner no.3 who lodged the FIR on the basis of which Crime No.80/2015 has been registered.

Conspicuously the place of that incident is also the hospital of Dr.Sandip. True it is that under the CCTV footage which is got forensically tested only petitioners 1 to 4 can be seen present in the hospital building. However, Dr.Sandip in his statement and supplementary statement has elaborately referred to all the petitioners by name, except petitioners no.7 and 8 who have been referred to as the brother in law of accused no.1 and his wife. It is for the trial Court to come to a conclusion about their such identity and one need not stretch the things further. The fact remains that Dr.Sandip has specifically named all the petitioners in his supplementary statement. In fact he has referred to few other persons but perhaps as a result of the investigation, they have not been charge sheeted by the Investigating Officer. This much of material in my considered view is sufficient to reveal occurrence of the incident in the hospital. There are witnesses who are not only employees working in the hospital but even there is a statement of a patient who was waiting for his turn in the hospital who has also stated about occurrence of the incident wherein Dr.Sandip was assaulted and was dragged out from his cabin and was abducted. There is one more witness Sk.Mukhid Sk. Mukaram who has seen Dr.Sandip being taken away in a vehicle.

9] Apart from the above state of affairs, there are injury certificates of Dr.Sandip, his mother Sunanda and brother Dipak who had sustained some injuries. Apparently one of the injuries sustained by Dr.Sandip was an incise wound on the vertex caused by a sharp weapon which apparently corroborates the prosecution version. The petitioner no.3 is alleged to have assaulted Dr.Sandip with knife but he having dodged it, sustained the injury to the head.

10] Taking into account all these aspects, in my considered view, no fault can be found with the observations made and the conclusion drawn by the learned Additional Sessions Judge while rejecting the application under Section 227 of the Cr.P.C. In view of such material, it is indeed difficult to hold that there exists no sufficient ground for proceeding against the petitioners. I find no apparent illegality committed by the learned Additional Sessions Judge in rejecting the application.

11] The Writ Petition is devoid of merit and is dismissed. The Rule is discharged.

12] It is made clear that the observations made hereinabove are confined to the decision of the present Petition.

(MANGESH S. PATIL,J.)

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