

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 448 OF 2019

1. Faridbhai S/o Juberbhai Saiyyad,
Age: 33 yrs, Occu. Agri,
R/o Kot, Tq. Siddhpur, Dsit. Patan
(Gujarat State).
2. Mustafa @ Mustukmiya S/o Akbarmiya
Saiyyad, Age: 33 yrs, Occu. Agri,
R/o Kot, Tq. Siddhpur, Dsit. Patan
(Gujarat State).

... PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Police Station In charge,
Police Station Navapur,
Tq. Navapur, Dist. Nandurbar.
2. ShaileshKumar s/o. Dwarkabhai Patel,
Age: 38 yrs, Occu. Driver,
R/o. Thalota, Tq. Bisnagar,
Dist. Mhaisana, Gujarat State,
At present Althan Battar, SumanAmrut Society,
(Building, Room No.1001) Surat,
Gujarat State.

... RESPONDENTS

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Mr. V. M. Maney, Advocate for Petitioners.

Mrs. V. S. Choudhari, APP for Respondent No.1 / State.

Mr. Sachin B. Solanke, Advocate for Respondent No.2 (Appointed).

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CORAM : T. V. NALAWADE &
M. G. SEWLIKAR, JJ.

DATE : 08th January, 2020.

JUDGMENT: (Per T. V. Nalawade, J.)

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

2 The present proceeding is filed for the relief of quashing of FIR No.249 of 2018, registered with Navapur Police Station, District Nandurbar, for the offences punishable under Sections 395 of the Indian Penal Code and Section 3 read with 25 of the Arms Act. Copy of charge-sheet is filed and from the record it can be said that the case is filed for the offence of dacoity against others and there will be charge for the offence punishable under Section 3 read with 25 of the Arms Act as against the present Petitioners. This Court has gone through the contents of FIR and other papers of investigation.

3 The incident of dacoity took place on 11th October, 2018. After intercepting four wheeler of the informant, he was robbed of cash amount of Rs.2,41,50,000/-. At the time of commission of offence, one of the dacoit was having revolver and by showing the revolver, threats were given and then the informant was robbed. The present Petitioners are not described as dacoits. It appears that

during investigation, dacoits were traced and one of the dacoit supplied information that about one year prior to the date of dacoity, he had procured revolver from a Muslim man from Gujarat State. He had taken police to the present Petitioners. Petitioner Nos.1 and 2 are relatives of each other. As such information was given by the Accused, the Petitioners came to be arrested and there will be charge against them that they had supplied revolver to the Accused. Nothing was recovered during investigation from the present Petitioners. Possibility is that during interrogation the Petitioners had admitted that they had supplied the revolver to the dacoits about one year prior to the date of incident. For trial of Petitioner Nos.1 and 2 for the offence punishable under Section 3 read with 25 of the Arms Act, there needs to be some evidence. The so-called disclosure of one of the dacoit or so-called admission given by the present Petitioners to police during investigation, cannot be used as evidence against the Petitioners. Thus, during trial, there was virtually no evidence as against the present Petitioners. Nothing can be achieved by trying the present Petitioners for the aforesaid offence. In the result, the following order is passed:

ORDER

- I. The petition is allowed.

- II. Relief is granted only to the present Petitioners in terms of prayer clause (B) and to that extent only the FIR stands quashed and set aside.
- III. The fees of the appointed counsel is quantified as Rs.3,000/- and it is to be paid through the High Court Legal Services Sub-Committee, Aurangabad.
- IV. Rule is made absolute in aforesaid terms.

[M. G. SEWLIKAR, J.]

[T. V. NALAWADE, J.]

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