

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

CRIMINAL WRIT PETITION NO. 81 OF 2018

Sachin Ambadas Gawande,
Age 28 years, Occu. Labour,
R/o Shirasgaon, Tq. Newasa,
Dist. Ahmednagar

... Petitioner

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Police Station, Newasa
District Ahmednagar
2. Haribhau Jagannath Nabde,
Age years, Occu. Service,
R/o Shirasgaon, Tq. Newasa,
Dist. Ahmednagar

... Respondents

...
Advocate for Petitioner : Shri Sachin S. Panale
APP for Respondent No.1 – State : Smt. Vaishali N. Patil Jadhav
Advocate for Respondent No.2 : Shri Pratap Vikhe h/f
Shri R. R. Karpe
...

**CORAM : T. V. NALAWADE &
B. U. DEBADWAR, J.J.**

DATE : 20TH JANUARY, 2021

ORDER [PER : B. U. DEBADWAR, J.] :

1. This is a writ petition for quashing of Regular Criminal Case No.16 of 2019, pending in the Court of Additional Chief Judicial Magistrate, Newasa, Ahmednagar, along with Crime No.482 of 2017 registered at Newasa Police Station, Ahmednagar, on 19-10-2017, for the offence punishable under Section 326 read with Section 34 of the Indian Penal Code (hereinafter referred as "IPC").

2. Heard Shri Sachin S. Panale, learned advocate for petitioner, Shri Pratap Vikhe, holding for Shri R. R. Karpe, learned advocate for respondent No.2 and Smt. Vaishali N. Patil Jadhav, learned APP for respondent No.1 – State.

3. On 17-10-2017, PSO of Kotwali Police Station, Ahmednagar, rushed to Dr. Chahal Accident Hospital where respondent No.2 was admitted on indoor basis and after obtaining fitness certificate from Dr. Chahal Accident Hospital, recorded his statement which came to be registered at Newasa Police Station as an FIR on 19-10-2017 bearing Crime No. I-482 of 2017. The said FIR inter alia contends that he is an employee in the Sonai Factory as a 'slip boy'. On 16-10-2017, in morning hours, he was proceeding on his motorcycle bearing No. MH-20-CJ-3504, towards Sonai Factory from his village Shirasgaon, Tq. Newasa, Dist. Ahmednagar, for collecting Diwali bonus sanctioned. At about 08.00 am, when he was on his way to Sonai Factory, at a distance of approximately 01 km from the village, one motorcycle bearing No. MH-17-AP-6562 came from the opposite side. Petitioner – Sachin Ambadas Gawande was sitting on pillion seat of the said motorcycle with iron rod, locally known as *Tambi*. When said motorcycle came near to the motorcycle on which respondent No.2 was riding, petitioner – Sachin gave a blow of the said iron rod targeting his head. However, to save the blow on head, respondent No.2 raised

his right hand. Consequently, very severe injury caused on the wrist and right hand ring finger of respondent No.2. After assaulting, the motorcycle, on which petitioner was seating as a pillion rider, proceeded further in high speed. On receiving aforesaid injuries on the right hand, respondent No.2 immediately halted the motorcycle on road and informed about the incident to his brother – Subhash Jagannath Nabde, by calling on his cell phone. Upon which, brother Subhash rushed to the spot where incident took place and carried respondent No.2 initially to the hospital of Dr. Najan situated at Newasa Phata. After first-aid, on the advice of Dr. Najan, brother Subhash shifted him to Dr. Chahal Accident Hospital, Ahmednagar, and admitted him there. After examination, surgery was performed on the wrist of his right hand. It is his contention that there is nexus between the incident of assault committed on him by the petitioner and the incident took place earlier to the aforesaid incident.

4. On the basis of aforesaid, FIR bearing Crime No. 482 of 2017, came to be registered at 04.30 pm on 19-10-2017, for the offence punishable under Section 326 read with Section 34 of IPC. After investigation, petitioner came to be charge-sheeted before the J.M.F.C., Newasa, for aforesaid offence.

5. Being aggrieved by the said FIR and criminal case bearing R.C.C. No. 16/2019, arising out of the said FIR, petitioner /

accused has filed this writ petition for quashing both of them.

6. Shri Panale, learned advocate, while taking us through the FIR and charge-sheet arising out of Crime No. 482/2017, vehemently argued that the FIR lodged and charge-sheet filed against the petitioner are false and afterthought. No incident as alleged, ever took place. Respondent No.2 has lodged the false FIR as a counterblast to the FIR bearing No. 400 of 2017 registered at Newasa Police Station on 15-08-2017, for the offences punishable under IPC, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Maharashtra Police Act, lodged by the wife of petitioner against him and his family members. In the said FIR, specific allegations have been made against respondent No.2. Bail application moved by respondent No.2 in Crime No.400 of 2017 came to be rejected by the Sessions Court. Also, this Court has confirmed the said rejection, vide order dated 09-10-2017, in Criminal Application No. 4928 of 2017. In spite of rejection of the bail application, police authorities have not arrested respondent No.2, though he requested for the arrest of respondent No.2 time and again. The respondent and his family members are constantly threatening the petitioner. Respondent No.2 has lodged false FIR against the petitioner, as police did not arrest him though his anticipatory bail application came to be rejected by Sessions Court and this Court both. Without conducting proper investigation police

have falsely charge-sheeted the petitioner. The witnesses cited in the charge-sheet are interested witnesses. At the time of alleged incident, petitioner was present in his house and not at all riding the motorcycle on Shirasgaon to Sonai Factory road. On the contrary, respondent No.2, riding the motorcycle on the said road, met with the accident at a distance of 15 km away from the alleged spot, while proceeding towards Sonai Factory. Since FIR and charge-sheet are false and afterthought, petitioner cannot be made to face the trial which ultimately will result in acquittal.

7. According to Shri Panale, this is a fit case where abuse of process of law can be prevented by quashing of the FIR and charge-sheet.

8. Per contra, Shri Pratap Vikhe, learned advocate, vehemently argued that FIR lodged against petitioner clearly spells out the offence committed by petitioner. The allegation of assault on the wrist and ring finger of right hand is supported by the medical evidence. During the course of investigation, statements of brother – Subhash and villagers who rushed to the spot, in pursuance of phone call made by respondent No.2, came to be recorded. Spot panchanama also supports to the case made out in the FIR and charge-sheet. The defence of the petitioner cannot be considered at this stage. If during the trial petitioner succeeds in establishing his defence, then he would get acquittal. Since FIR

and charge-sheet makes out prima facie case of grievous assault by deadly weapon by the petitioner on respondent No.2, prayer for quashing the FIR and charge-sheet cannot be considered, only for the reason that Court refused to grant anticipatory bail to respondent No.2. Accordingly, Shri Vikhe, learned advocate, prayed for rejection of the writ petition. Smt. V. N. Patil Jadhav, adopted the aforesaid argument advanced by Shri Pratap Vikhe.

9. In the light of aforesaid submissions, we have carefully gone through all the papers appended to the writ petition. It is evident from the record that on 16-10-2017 at 12.45 pm, respondent No.2 was admitted to Dr. Chahal Accident Hospital, Ahmednagar, in injured state. The FIR challenged in this writ petition indicates that immediately after the incident respondent No.2 was taken to hospital of Dr. Nanan, situated at Newasa Phata, from the spot of accident and after first-aid, on the advice of Dr. Najan, he was shifted to Dr. Chahal Accident Hospital. Injury certificate issued by the Medical Officer of Dr. Chahal Accident Hospital demonstrates that respondent No.2 had suffered two injuries, one was the wrist trauma on right hand – distal radius volar Barton fracture and another was hand trauma on right hand – 4th and 5th metacarpal fracture. Both the injuries were caused within six hours by blunt object and nature of the said injuries was grievous. One more certificate issued by Dr. Jagdish Chahal Pail,

Orthopedics Surgeon, attached to Dr. Chahal Accident Hospital, demonstrates that after getting admitted on the very day, i.e. on 16-10-2017 respondent No.2 was operated and on 18-10-2017 he was given discharge. Statement of witnesses annexed to charge-sheet including Subhash Jagannath Nabde, brother of respondent No.2, prima facie supports to the case made out in FIR and charge-sheet that in pursuance of call made by respondent No.2 they rushed to the spot and saw respondent No.2 lying there in injured state.

10. In view of the medical papers and statements of the witnesses, at this juncture, the contention of petitioner that no incident, as alleged in the FIR, has occurred and that the FIR is false and afterthought, cannot be accepted.

11. It is the matter of record that Crime No.400 of 2017 registered at Newasa Police Station on 15-08-2017, was lodged by Smt. Manisha Sachin Gawande, wife of petitioner, for the offences punishable under Sections 354, 143, 147, 148, 323, 504, 506 of IPC and Sections 3(1)(R)(S)(W), 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 37(1)(3) read with Section 135 of the Maharashtra Police Act, against respondent No.2 and 12 more persons from his family and the application for anticipatory bail moved by respondent No.2,

came to be rejected by the learned Sessions Court and this Court has also confirmed the said rejection. But, at this juncture, merely relying on the same, inference about falsity of FIR and charge-sheet which is challenged by the petitioner cannot be drawn. Besides, two fold contentions (defences) of the petitioner that at the time of alleged offences he was present in the house / village and respondent No.2 mate with an accident and suffered injuries on his right hand on the alleged date and time, while riding motorcycle on Shirasgaon to Sonai Factory road, cannot be accepted. Petitioner has to prove the same during trial before the Sessions Court by adducing cogent evidence.

12. Thus, having considered the totality of factual circumstances and submissions made at bar, we are not inclined to grant the relief of quashing the R.C.C. No.16 of 2019 pending before the Court of Additional Chief Magistrate, Newasa along with Crime No. 482 of 2017 and charge-sheet as prayed by the petitioner.

13. Hence, the writ petition is dismissed.

(B. U. DEBADWAR, J.)

(T. V. NALAWADE, J.)