

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

957 CRIMINAL APPLICATION NO.905 OF 2021

MOHAN DEVGIR GOSAVI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. M. V. Salunke
APP for Respondent no.1- State: Mr. S. D. Ghayal
Advocate for Respondent no.2 : Mr. A. J. Patil

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**CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATED : 5th JANUARY, 2022.

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ORDER :

1. Heard finally with consent at admission stage.
2. Learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant nos. 1 & 2 with liberty to them to file an application for discharge before trial court after filing of the charge sheet.
3. Leave granted. Application of applicant no.1 Mohan and no.2 Rajendra is dismissed as withdrawn with liberty to both of them to file an application for discharge before trial court after filing of the charge sheet.

4. The applicants/ original accused are seeking quashing of FIR bearing Crime No. 48 of 2021, registered with Shani Peth Police Station, Jalgaon for the offence punishable under Section 379 read with 34 of IPC.

5. Leave granted. Application of applicant nos. 1 and 2 is dismissed as withdrawn with liberty to file an application for discharge before the trial court after filing of the charge sheet.

6. Learned counsel for the applicants submits that the informant is not an eye witness and even there are no eye witnesses to the incident. The prosecution case entirely rests upon the CCTV footage. Learned counsel submits that so far as identity of applicant nos.3 and 4 in terms with the CCTV footage, the same has not been established. There are no criminal antecedents. Applicant no.4-Saurabh was 17 years of age at the time of alleged incident. As per the school leaving certificate Exh.-A his date of birth is 21/11/2004. He is taking education at present. So far as applicant no.3-Gaurav is concerned, he is just 18 years of age and he is also taking education.

7. Learned counsel for respondent no.2 submits that on the basis of CCTV footage, respondent no.2 informant has identified involvement of co-accused persons and the applicants herein in

the commission of crime. Investigation is still going on. Even on the earlier occasion, co-accused persons have made two attempts to commit theft of dumper. However, in their third attempt, they have committed theft of the dumper. Learned counsel submits that there is a triable case against the applicants and co-accused persons. Applicant no.3 Gaurav is more than 21 years of age at present. There is no substance in the criminal application and thus, the application is liable to be rejected.

8. Learned APP submits that as directed by this court, the transcript of the CCTV footage is now called and the same has been submitted through the report of the investigating officer. Learned APP submits that appropriate order may be passed.

9. We have carefully gone through the allegations made in the complaint and also perused the police papers. So far as the incident dated 24/03/2021 is concerned, the said incident has taken place in between 2.30 a.m. to 3.00 a.m. Consequently, no one has witnessed the said incident. The complaint came to be lodged only on the basis of the CCTV footage. According to respondent no.2-informant, the identity of the applicants along with co-accused persons, is established on the basis of the CCTV

footage collected by the investigating officer during the course of investigation.

10. We have carefully gone through the transcript of the CCTV footage submitted before us through the report of the investigating officer. It appears that the investigating officer has referred the footage of CCTV in seven parts and further concluded that even though respondent no.2-informant has stated that the identity of the applicants and co-accused persons is established, however, it is not at all clear from the CCTV footage about the identity of the present applicants. There are no antecedents. Both the applicants are taking education. So far as co-accused Mohan and co-accused Rajendra are concerned, prior to this incident, they have made two attempts to commit theft in respect of the same dumper. There is a dispute in respect of the dumper and its ownership between the informant and original accused nos. 1 and 2. It, thus, appears that with certain oblique motives, both the sons of co-accused Rajendra, have also been implicated in connection with the present crime. Thus, considering the entire aspect of the case, we are inclined to quash the FIR to the extent of applicant no.3-Gaurav Rajendra Gosavi and applicant no.4-Saurabh Rajendra Gosavi. Hence, we proceed to pass the following order.

ORDER

- I) Criminal Application is allowed in terms of prayer clause "B" to the extent of applicant no.3 Gaurav Rajendra Gosavi and applicant no.4-Saurabh Rajendra Gosavi.
- II) Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)**(V. K. JADHAV, J.)**

vsm/-