

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

CRIMINAL WRIT PETITION NO. 712 OF 2022

Shaikh Yunus Shaikh Chand
Age : 44 years, Occu. : Business,
R/o. Mungi Village, Tq. Shevgaon,
Dist. Ahmednagar .. Petitioner

Versus

1. The State of Maharashtra
(At the instance of Satara
Police Station)
2. Imran Ahemed Shaikh Ahemed
Age : 26 years, Occu. : Business
R/o. : Mungi Village, Tq. Shevgaon
Dist. Ahmednagar .. Respondents

Mr. Abhaysinh K. Bhosle, Advocate for the Petitioner.

Mr. Y. G. Gujrathi, APP for Respondent No. 1.

Mr. Shashikant R. Pande, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 08th DECEMBER, 2022.

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. By consent of the parties, taken up for hearing.
2. This is a petition challenging an order passed by the learned Sessions Judge, Aurangabad on an application below Exhibit-35 dated 21.04.2022 in Sessions Case No. 126/2001. By the impugned order the

learned Sessions Court has allowed the application and cognizance of the offence in Crime No. 343/2020 registered under Sections 307, 341, 504 r/w Section 34 of the Indian Penal Code (for short "I.P.C.") and under Section 25 of the Arms Act and Section 135 of the Mumbai Police Act registered with Satara Police Station, Aurangabad is taken against the petitioner and he is made as accused No. 3 and the process came to be issued against the present petitioner.

3. Heard learned advocate for the petitioner. He submits that in the entire charge-sheet there is no material sufficient to show this petitioner as accused except the statement of the informant in the FIR and except one statement under Section 164 of the Code of Criminal Procedure (for short "Cr.P.C.") of the informant. There is no reference to his name. Thus, in absence of any material passing of the order is totally illegal and without any justification. From the report of the police under Section 173 of the Cr.P.C., he submits that the police on investigation did not file any case against the petitioner and therefore, charge-sheet was filed only against two persons namely one Shaikh Babar and Shaikh Altaf. The only allegation is that both these accused persons are working with the present petitioner and by no stretch of imagination they said to be material against him. Learned advocate for the petitioner invited attention to the injury certificate, however, fairly

concedes that an offence is made under Section 307 of the I.P.C. However, it is only against other two accused persons against whom already a charge-sheet is filed. At last, he submits that merely because other accused persons were working with him will not make him liable for prosecution.

4. The petitioner submits that the application is filed by the informant. The police has specifically stated that no material is found against this accused and there was also a reason for other accused to have grudge against the informant because there is dispute between them and which is reflected in the report filed by the police. For the same, the prosecution has filed an earlier application Exhibit-42 before the learned Sessions Court which is not properly considered by the learned Sessions Judge.

5. Learned A.P.P pointed out the statement recorded under Section 164 of the Cr.P.C. of the informant wherein, he has categorically stated that two persons came on the motorcycle and one of them has used the pistol and fired a bullet on him by which the informant received the bullet injury. In that statement, he stated that he came to know the names of the persons from the police. He has only stated that he has seen Shaikh Babar to whom he has seen working with the present petitioner who happens to be uncle of the informant. He further stated

about previous complaints are filed against each other wherein, this petitioner had threatened of dire consequences. There is one more statement as pointed out by the learned A.P.P. from one Shaikh Shabana wherein, she had stated that this petitioner had threatened her parents and the present informant of dire consequences. She has further stated that she came to know later on from one Imran about the assault on the informant. In his submission this material is rightly considered by the learned Sessions Judge and the process is rightly issued by the Court and he supported the order.

6. Learned advocate for respondent No. 2 has invited attention of this Court to the order passed by the learned Sessions Court and specifically paragraph No. 10 which was already read by the learned advocate for the petitioner to submit that the Court has rightly taken the note of the same. The case is of circumstantial evidence as against this petitioner. He further submitted that the learned Sessions Court has rightly taken note of the fact that no report under Section 169 of the Cr.P.C. is filed by the police. Had the said been filed he would have got an opportunity to file a protest petition and to take the matter further. However, for some reason, the investigating officer has not filed report under Section 169 of the Cr.P.C. and forwarded the report under Section 173 of the Cr.P.C. only against other accused persons and

by this a prejudice is caused to his rights which made him to file an application below Exhibit-35 before the Sessions Court under Section 193 of the Cr.P.C. He further relied upon the judgment of this Court in a case of Mrs. Shehnaj Taj Mohd. Hashmi and anr. Vs. Senior Inspector of Police and another reported in 2017 CRI.L.J. 3644 and another judgment of the Hon'ble Apex Court in a case of Dharam Pal Vs. State of Haryana reported in AIR 2013 (SCW) 4491 in Criminal Appeal No. 148/2003.

7. Considering the submissions and going through the material on record, it does appear that in the FIR itself the name of the petitioner is shown as accused No. 1 whereas, other accused persons are shown as unknown persons. From the FIR it is further clear that, a clear motive is alleged against the present petitioner. It is also alleged that other accused namely Shaikh Babar was working with the present petitioner and therefore, the allegation of conspiracy is made. Even in the statement under Section 164 of the Cr.P.C, specific allegation is made against the present petitioner. In paragraph 19 in the case of Mrs. Shehnaj Taj Mohd. Hashmi and another (supra), the Division Bench of this Court has categorically held that the final report was filed in a most cursory manner and thus, was not in consonance with the provisions of the Cr.P.C. as well as the rules under Bombay Police

Manual as the police have not disclosed the reasons for not sending those petitioners for trial and had not requested to classify the case and issued a proper summary viz. "A", "B" or "C" summary. Paragraph 19 is reproduced as below :

"19. It may be mentioned that filing of the final report is not an empty formality. Such report should contain all the details for not sending the accused for trial, as to enable the Magistrate to decide what course to adopt i.e. whether to accept the report and discharge the bonds or order further investigation or to take cognizance of the offence. In the instant case, the report reveals that the concerned Investigating Officer/ Officer-in-charge of the police station had not filled up all the required details pertaining to these petitioners and in fact, most of the columns have been left blank. The concerned Police Officer has also not disclosed the reasons for not sending the aforesaid petitioners for trial and has not made request to classify the case and issue an appropriate summary viz. "A", "B" or "C" Summary. The final report is filed in a most cursory manner and is not in consonance with the provisions of Cr.PC.as well as the Rules under Bombay Police Manual."

8. In the judgment in a case of **Dharam Pal** (supra) in paragraph No. 28 the Hon'ble Apex Court has held as reproduced below :

"28. In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh's case that the Session Courts has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Session Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein."

9. Thus, it was necessary for the police in this case also either to file a charge-sheet under Section 173 of the Cr.P.C. or to file a report under Section 169 of the Cr.P.C. Further, it is seen that the learned Sessions Judge very well possesses power to pass the impugned order. Considering that the petitioner is specifically named in the FIR, the learned Session Court has rightly passed an order. I do not find any substance in the petition. The right of the informant is taken away to protest the petition and for that reason also it was necessary for the police to file the report under Section 169 of the Cr.P.C.

10. Considering the judgments and the submissions this Court feels that, no case is made out and the rule is therefore discharged.

11. At this stage, learned advocate for the petitioner makes a request that ad interim relief was granted by this Court while issuing notice by order dated 06.10.2022 and the same may be continued. However, this Court feels that there is remedy to the petitioner to file discharge application and there is no immediate apprehension of any action. The same is rejected.

(KISHORE C. SANT, J.)

P.S.B.