

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

CRIMINAL APPLICATION NO.2759 OF 2022

- 1) Sangeeta W/o Balasaheb Markad,
Age-36 years, Occu:Household,
R/o-Bhavi Nimgaon, Tq-Shevgaon,
District-Ahmednagar,
- 2) Suhash @ Pratik S/o Balasaheb Markad,
Age-19 years, Occu:Education,
R/o-Bhavi Nimgaon, Tq-Shevgaon,
District-Ahmednagar,
- 3) Sachin S/o Balasaheb Markad,
Age-17 years, Occu:Education,
U/g. Of respondent No.4 father
R/o-Bhavi Nimgaon, Tq-Shevgaon,
District-Ahmednagar,
- 4) Balasaheb S/o Dattatraya Markad,
Age-43 years, Occu:Agriculture,
R/o-Bhavi Nimgaon, Tq-Shevgaon,
District-Ahmednagar.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Police Station
Incharge, Shevgaon,
District-Ahmednagar,
- 2) Savita W/o Revannath Markad,
Age-43 years, Occu:Agri & Household,
R/o-Bhavi Nimgaon, Tq-Shevgaon,
District-Ahmednagar.

...RESPONDENTS

...
Mr.Dattatraya R. Markad Advocate for Applicants.
Mr.B.V. Virdhe, A.P.P. for Respondent No.1.
...

**CORAM: SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 12th SEPTEMBER, 2022

ORDER :

1. Heard learned Advocate appearing for the applicants and learned APP for respondent No.1. There is no necessity to issue notice to respondent No.2.

2. By this Application, the applicants intend to invoke the inherent powers of this Court under Section 482 of the Code of Criminal Procedure for quashing First Information Report (for short "FIR") vide Crime No.257 of 2022 registered with Shevgaon Police Station, District-Ahmednagar for the offence punishable under Sections 307, 323, 324, 447, 504, 506 read with Section 34 of the Indian Penal Code.

3. It has been vehemently submitted on behalf of the applicants that there is history of enmity between the parties, so also the husband of the informant – respondent No.2 is serving as police and therefore she has managed to get the offence

registered including for Section 307 of the Indian Penal Code. Perusal of the FIR would show that ingredients of the offences are not made out. No injury certificate was produced before the learned Additional Sessions Judge, Ahmednagar who has dealt with the bail application under Section 438 of the Code of Criminal Procedure.

4. Per contra, the learned APP submits that though the papers are yet to be received, he can definitely say that from the contents of the FIR, the ingredients of the offences are made out and therefore the discretionary powers cannot be used.

5. At the outset, it will have to be observed that the criteria that is required to be considered while dealing with application under Section 438 of the Code of Criminal Procedure is different than the criteria that is required to be adopted for Section 482 of the Code of Criminal Procedure for quashment of the FIR. The FIR came to be registered on 26th April 2022 and the present application has been filed on 12th August 2022. The investigation appears to be still pending. Under such circumstance, Section 482 of the Code of Criminal Procedure cannot be so used to abort the investigation. The second aspect is that, it is absolutely

not necessary that there should be injury certificate when case is considered for Section 307 of the Indian Penal Code. What matters is the *mens rea* to commit murder. If we consider the contents of the FIR, it has been stated that on 24th April 2022 at about 1.00 p.m. the informant was in field when applicant No.4 came there on motorcycle, the informant asked him as to why he obstructed the informant for transportation of the agricultural produce. At that time motorcycle was tried to be run over the informant by giving threat to kill by applicant No.4 i.e. accused No.1 and thereafter, it is stated that, the other accused have assaulted, criminally intimidated and insulted by giving abuses. Therefore, *prima facie*, there appears to be support to the Section.

6. It will have to be then observed that the applicants did not wait for production of the charge-sheet to the trial Court or committal Court. There might be witnesses whose statements would have been recorded under Section 161 of the Code of Criminal Procedure, and also the other documents. The observations by the learned Additional Sessions Judge, Ahmednagar are definitely not binding on this Court and it can further be said that when those observations are made under the

presumption that medical evidence in the form of injury certificate is necessary. The present case does not fall within the criteria enumerated in ***State of Haryana and others vs. Ch. Bhajan Lal and others***, reported in **AIR 1992 SC 604**, and therefore the Application deserves to be rejected.

7. The Application stands rejected.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE