

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

942 CRIMINAL WRIT PETITION NO.1053 OF 2018

PANDHARINATH @ MACHINDRA S/O. GANPAT RATHOD
VERSUS
THE STATE OF MAHARASHTRA

Mr.Suvidh S. Kulkarni, Advocate for the petitioner.

Mr.PN. Kutti, APP for the respondent/State.

CORAM : KISHORE C. SANT, J.
DATED : 24.11.2022

PC :-

01. Heard learned Advocate for the petitioner and learned APP for the respondent. The petition is taken up for final disposal at the stage of admission.

02. The petitioner has challenged order passed by the learned Sessions Judge, Jalna dated 22.06.2018, passed in Sessions Case No.95 of 2017, on an application below Exh.14. By moving application Ex.14, the petitioner has prayed for discharge. The offence was registered on the basis of FIR that was lodged by one Narayan Rathod dated 14.12.2015 in which he has alleged that this petitioner along with four others assaulted the informant, as there was dispute between both the parties. There is specific allegation

against this petitioner that he used handle of axe and the informant received injury and there was swelling on left arm. Supplementary statement also came to be recorded on 15.12.2015. As per allegations of the petitioner there is improvement in the supplementary statement to the extent that the informant in this supplementary statement has stated that there was assault even on the leg. The learned Advocate for the petitioner further argued that as a matter of fact, he was in the school on the day of incident, which is 150 kms away from the place of incident. In his school he recorded his bio-metric presence and there is certificate to show that on that day his bio-metric presence was recorded in the school. He further argued that looking at the injury certificate, it is seen that there is no injury corresponding the allegations. There are injuries but those are on the different parts of the body. Thus, he also pointed out a statement of daughter-in-law of the informant and tried to show that the submissions are contradictory. He also invited attention to the statement recorded under section 164 of the Cr.P.C. of the daughter-in-law and tried to submit that even her statement is contrary to her own statement. The main ground is that he was not present at the spot.

03. Learned Counsel for the petitioner has relied upon judgment

reported in AIR 1972 SC 545 in the case of Century Spinning and Manufacturing Co. Ltd. Vs. State of Maharashtra. By reading para 16 of the judgment, he submits that this Court can very well consider the evidence by considering application for discharge, if the evidence is of clinching nature. Further, in case of Niranjan Singh Karam Singh Punjabi Vs. Jitendra Bhimraj Bijja and Ors. reported in 1990 Cri.L.J. 1869, he relies upon para 7 of the judgment and submitted that even strong suspicion is not sufficient to frame charge unless there is material produced on record in support of the charge. Third judgment he relied upon is the judgment reported in 2002 Cr.L.J. 980 in the case of Dilawar Babu Kurane Vs. State of Maharashtra, wherein the Apex Court held that suspicion, however, strong may not be sufficient to frame charge against the accused person in absence of sufficient material available on record and prays for quashing and setting aside of the impugned order and discharge the petitioner.

04. Learned APP opposed the petition stating that this is not the stage to appreciate the evidence. The prosecution needs an opportunity to prove the evidence before the Court. So far as plea of alibi is concerned, he submits that it is necessary for the accused to prove the plea of alibi. Today this is not

the stage to look into the plea of alibi raised by the petitioner. He supports the the impugned order, pointing out the reasons assigned by the learned Trial Court in the order. It is seen that the Trial Court has rightly observed that when plea of alibi is taken, it is for the accused to prove the same. The prosecution has right to cross-examine such witness. He further deposed that whether the corresponding injuries are found or not is also a matter of evidence. It is further considered that whether the petitioner was part of the assembly or not is also question of fact, which needs to be proved in the Trial as the allegations are under section 307, 143, 147, 148, 149, 324, 325, 323, 504 and 506 of the Indian Penal Code.

05. Considering the submissions and after going through the record, it is seen that the learned Sessions Judge has not committed any illegality while passing order. No case is made out calling for interference at the hands of this Court. This Court finds that there is no substance in the petition. Same is dismissed.

[KISHORE C. SANT, J.]