

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.5038 OF 2018

1. Subhash @ Bapusaheb Laxman
Jagtap
Age 60 years, Occupation-Councillor.

2. Suraj Subhash @ Bapusaheb Jagtap
Age 37 years, Occupation-Councillor.
btoh are resident Karmala Raod,
Kurduwadi, Taluka-Madha,
District-Solapur.

... Petitioners.

V/s

The State of Maharashtra
through Kurduwadi Police Station
Solapur Gamin, district-Solapur

... Respondents.

.....

Mr Sandesh Patil i/b Prashant Jadhav, for the Petitioners.
Mrs P.P. Shinde, APP for the State.

....

**CORAM : REVATI MOHITE DERE
& R.N.LADDHA, JJ.**

DATE : 29 November 2022.

ORDER (PER R.N.LADDHA, J) :

Heard learned Counsel for the parties.

2. Rule. The Rule is made returnable forthwith, with the consent of and at the request of the learned Counsel for the parties.

3. By this criminal writ petition, under Article 226 of the Constitution of India, r/w Section 482 of the Code of Criminal Procedure, 1973, the Petitioners seek the quashing of CR No.254 of 2018 dated 17.6.2018, registered with Kurduwadi Police Station, District-Solapur, for the offences punishable under Sections 302, 504, 506, 143, 147, 148, 149, 120-B and 427 of the Indian Penal Code, 1860 and subsequently order dated 11.9.2018 bearing No.C.R.-11/MCOC/2018/8491 under the provisions of Sections 3(1)(i)(ii), 3(2), 3(4) and Sections 4 and 25 of the Maharashtra Controlled Organised Crimes Act, 1999 (MCOC for short).

4. It is the case of the prosecution that on 17.6.2018 at about 12.45 p.m. the Petitioners along with other accused assaulted the deceased Vicky Gaikwad by sword, knife, chopper and iron rods and committed his murder.

5. Mr Sandesh Patil, learned Counsel appearing on behalf of the Petitioners, submitted that due to political rivalry the present Petitioners are entangled in the crime. It is submitted that the statements of witnesses indicates that the Petitioner No.2 was not present at the time of alleged incident. It is submitted that Petitioner No.2 at

the relevant time was attending a marriage ceremony. It is submitted that the provisions of MCOC Act does not apply to the Petitioner No.2. It is submitted that the brother of the Complainant had lost the Municipal Council Election against both the Petitioners in the year 2011 and 2016 and because of this rivalry the Petitioners were roped in this crime. It is submitted that there was delay in recording the statements of witnesses.

6. Mrs P.P.Shinde, learned APP contested the contentions of the learned Counsel for the Petitioners. She submitted that, while exercising the powers under Section 482 of the Cr.P.C. the High Court is not required to enter into and consider the case's merits in detail, which as such, are required to be considered at the time of trial. She submitted that when there are serious triable allegations in the report, it is inappropriate to quash the FIR in exercising the powers inherent in the High Court. She submitted that the Petitioners could not insist that this Court minutely examine the allegations made in the complaint to ascertain whether all the ingredients of the offence are present therein or not. She submitted that even though the inherent powers of this Court u/s 482 of Cr.P.C. to interfere with criminal proceedings are wide, such powers have to be exercised with circumspection and only in exceptional cases. She pointed out that in the

statements of the witnesses specific role have been attributed to these Petitioners.

7. It is settled principle of law that the High Court, in its jurisdiction under Section 482 Cr.P.C., was not expected to call upon to embark upon the inquiry whether the allegations in the FIR and the charge sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations. These are matters which can be examined only by the trial Court concerned after the entire material is produced before it on a thorough investigation and evidence is led. All these aspects are highlighted in the case of ***Central Bureau of Investigation Vs. K.M. Sharan (2008) 4 SCC 471.***

8. In the present case, the material available on record prima facie indicates that the first informant had sustained multiple injuries on his person. It reveals from the record that in the statements of the witnesses specific role were attributed to these Petitioners. Insofar as the material available in the charge sheet is concerned, we prima facie find that the prosecution has spelt out the offending acts of the Petitioners. The allegations made against the Petitioners prima facie do constitute a

cognizable offence justifying registration of crime against them.

9. Besides, upon perusal of the categories as enumerated by the Hon'ble Supreme Court in the case of Bhajan Lal it is seen that the case of the Petitioners does not fall under any of the parameters, warranting quashing of the FIR.

10. Considering the aforesaid, we are of the opinion that no case is made out to quash the impugned FIR. However, we abstain from discussing the statement of the witnesses and the extent of their substantiation of the FIR, as we apprehend that the same may create an unconscious impression in the mind of the learned trial Court. We wish to mention that this order should not be construed as having ruled on the merits of the matter. Consequently, the learned trial Court shall not be influenced by any of the observations made by us in this order.

11. In light of the above, the present petition, being without merit, is accordingly, dismissed.

R.N.LADDHA,J.

REVATI MOHITE DERE,J.