

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

CRIMINAL WRIT PETITION NO.2452 OF 2022

1. Mohammed Jani Shaikh
2. Sajid Jani Shaikh
3. Abdul Subhan Abdul Razzak Shaikh ...Petitioners
Versus
The State of Maharashtra and Ors. ...Respondents

Mr. Jitendra M. Pathade, for the Petitioners.

Ms. P. P. Shinde, A.P.P for the Respondent Nos.1 to 5 and 9.

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : 20th JULY 2022

P.C. :

1. Heard learned counsel for the petitioners.
2. By this petition, the petitioners have sought the following substantive reliefs:-

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“(b) Hon’ble Court may kindly by appropriate Writ, order and Direction may kindly quash and set aside Impugned notice dated 10.03.2022, issued by the Respondent No.03 having

outward no.1068/pouaa/pari.05/VA/22 and other proceedings arising therefrom in the interest of Justice;

- (c) Hon'ble Court may kindly by appropriate Writ, order and Direction may kindly transfer enquiry of the impugned Notice dated 10.03.2022, issued by the Respondent No. 03 having outward no. 1068/pouaa/pari.05/VA/22 and other proceedings arising there from Deputy Commissioner of Police Zone-5 (i.e. The Respondent No. 03) to other zone of the Deputy Commissioner of police, Mumbai in the interest of justice;
- (d) Hon'ble Court may kindly by appropriate Writ, order and Direction may kindly order the Respondent No 09 to decide the complaint dated 29.04.2022 as expediently as possible considering the seriousness in the complaint of the Petitioners.”

3. Learned Counsel for the petitioners submits that the petitioners apprehends that they will not get full-fledged hearing before the Deputy Commissioner of Police, Zone 5, Mumbai i.e. the respondent No.3. He submits that the grounds in the impugned notice are vague and that the notice has been malafidely issued at the behest of one Mr. Chand Shaikh. He submits that no confidential statements/in-camera statements have been recorded in the present case, which is also the basis for issuing a notice. He further submits that the provisions of Section 55(1) of the Maharashtra Police Act, is

not attracted, resulting in the impugned notice being vitiated. Several grounds have been raised in the petition, apart from what is stated aforesaid.

4. Learned APP opposes the petition. She submits that the proceedings are pending before the Deputy Commissioner of Police, Zone 5, Mumbai i.e. the respondent No.3 and that all the grounds raised by the petitioners in the aforesaid petition can be raised before the Deputy Commissioner of Police, Zone 5, Mumbai. She further submits that there is no ground for transferring the enquiry outside the jurisdiction of the respondent No.3.

5. The impugned notice issued by the Deputy Commissioner of Police, Zone 5, Mumbai i.e. the respondent No.3 is dated 10th March 2022. Pursuant to the said notice, the petitioners have appeared before the Deputy Commissioner of Police, Zone 5, Mumbai and as such the proceedings are pending before the said authority.

6. Considering that the proceedings are pending before the Deputy Commissioner of Police, Zone 5, Mumbai, we do not deem it appropriate to entertain the aforesaid petition. Needless to state that, all the grounds raised by the petitioners in this petition can be agitated by the petitioners before the Deputy Commissioner of Police, Zone 5, Mumbai i.e. the respondent No.3.

7. If the said grounds are raised, the Deputy Commissioner of Police, Zone 5, Mumbai i.e. the respondent No.3, shall consider the said grounds, on its own merits, in accordance with law.

8. If the order passed is adverse to the petitioners, it is always open for the petitioners to challenge the same before an appropriate forum.

9. Petition being premature is dismissed with the aforesaid observations. It is made clear that we have not gone into the merits of the petition and as such all grounds/issues raised by the petitioners in

this petition are kept open for being agitated before the appropriate authority.

10. Needless to state that, the authorities will hear the petitioners before passing the impugned order.

11. Petition is accordingly disposed of on the aforesaid terms.

12. All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.