

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

CRIMINAL WRIT PETITION NO.3179 OF 2022

Faisal Abdul Sattar Kunda ...Applicant
Versus
Sameer Shaikh and Ors. ...Respondents

....

Mr. Misbah Solkar a/w Ms. Neha Thakkar, Advocate for the Petitioner.

Mr. S. R. Agarkar, APP for Respondent/State.

Mr. Sahara Shaikh, API Pydhonie Police Station, present.

....

CORAM : PRAKASH D. NAIK, J.

DATE : 27th SEPTEMBER 2022

PC :

1. The Petitioner challenges show cause notice dated 4th May 2022 bearing Chapter Case No. 07 of 2022/Court Case Proceedings No. 19 of 2022 issued by Respondent No.1.
2. The impugned show cause notice is initiated under Section 110 (e)(g) of Criminal Procedure Code. The notice refers to C.R. No.515 of 2022 registered with Pydhonie Police Station, Mumbai for offences punishable under Sections 304-A, 323, 504 read with 34 of the Indian Penal Code. It is alleged that, the complainant is residing at Jumma Masjid Building, Room No.15, Second Floor, Dongri, Mumbai alongwith his brother. Complainant's uncle Mansur Ali Abdul Kadar Merchant is residing at Baniyawala Building, First Floor,

Room No.4, Dongri, Mumbai. The Petitioner and his nephew Dawood Samad Kunda are residing in the same area. Both are known to complainant since last several years. The Petitioner has rented out his shop and the space in front of shop. The vendors are installing their juice cart in the front space of shop resulting in spread of garbage. Residents had made complaint in that regard to Corporation. The Petitioner and his nephew had abused uncle of complainant and other residents. The Petitioner and his nephew Dawood Kunda were abusing complainant's uncle Mansur Ali Abdul Kadar Merchant. Petitioner's nephew Dawood Kunda had threatened that, he has connection with underworld people and threatened complainant. On 02nd May 2022, the nephew of Petitioner picked up quarrel with the complainant. The Petitioner was called on phone at the spot. The uncle of the complainant Mansur Merchant and his cousin Khalid Merchant tried to intervene in the quarrel. The Petitioner and his nephew abused the Mansur Merchant and manhandled him. During the scuffle, the uncle of complainant fell down and became unconscious and then died. The Petitioner and his nephew were responsible for his death. FIR was registered vide C.R. No.515 of 2022 under Section 304-A, 323, 504 read with 34 of the Indian Penal Code. The Petitioner was arrested on 2nd May 2022 and he was released on bail. C.R. No. 51 of 2005 is registered against the

Petitioner in the past for offences punishable under Sections 307, 353, 447, 504 of IPC. The Petitioner is habitual offender and to control his activities and maintain law and order situation, report is submitted against him for initiating preventive action. It is proposed to initiate action against him under Section 110 (e)(g) of the Cr.P.C.

3. Learned Advocate for the Petitioner submitted that, the notice issued by Respondent No.1 is bad in law. The Petitioner is a businessman. He is the owner of shop situated at E. M. Road, Mumbai. The Petitioner's brother Mr. Abdul Samad Sattar Kunda had addressed the complaint to respondent No.2 seeking action against unauthorized hawkers sitting in front of their shop. No action was initiated by Police. Several complaints were addressed to various authorities on 6th February 2021, 17th February 2021 and 22nd February 2021 seeking action against the unauthorized hawkers stationed in front of the petitioner's shop and creating hindrances to the Petitioner and general public. In retaliation to the complaints, on 15th April 2021 Mohsin and other unknown person assaulted the petitioner for complaining against him. The petitioner lodged the complaint with Pydhonie Police Station. It was registered as N.C. complaint for offences punishable under Sections 323 and 504 of the IPC. On 1st July 2021, Mr. Mohsin and Rizwan abused and threatened the Petitioner's nephew Dawood Kunda, when he tried to

object them from gathering outside their shop creating hindrances for carrying out the business activities for the petitioner. Complaint was lodged by Petitioner's nephew with Pydhonie Police Station, Mumbai which was registered as N.C. complaint on 2nd July 2021 for offences punishable under Sections 504, 506 of IPC. The petitioner again addressed the complaint to Respondent No.2 on 11th April 2022 against Mohsin and another person. Whenever the Petitioner objected to activities of aforesaid persons the petitioner was threatened of dire consequences. Despite addressing several complaints and registering two NC complaints, Mohsin and his family members did not budge and continued to threaten the petitioner and create nuisance outside his shop. The petitioner had addressed the complaint to Home Minister dated 27th April 2022 seeking intervention and taking action against Mohsin and his family members. On 2nd May 2022 at about 7:30 pm, Hussain Muzaffarali and his brother Mohsin came outside the shop of the petitioner and assaulted his nephew Dawood Kunda. The petitioner's nephew called the Petitioner and informed him about the incident, who suggested him to call the police control room and accordingly his nephew Dawood Kunda dialed 100 from his mobile phone to report the assault upon him. The Petitioner rushed to the spot. Opponents arrived outside the said shop and started abusing and assaulting with

fists blows. The police reached the spot and intervened in the assault. Uncle of Mohsin namely Mansoor Ali Abdul Qadir Merchant had arrived at the spot and he was threatening the petitioner and his nephew. While police were trying to handle situation and disperse the crowd, Mansoor Ali Abdul Qadir Merchant collapsed at the spot. FIR was registered against the Petitioner vide C.R. No. 515 of 2022.

4. Learned advocate for the petitioner further submitted that the proceedings initiated under Section 110(e)(g) of the Cr.PC. are patently illegal and bad in law. There is non application of mind on the part of respondent No.1. None of the cases referred by respondent No.1 has the effect of disturbing public peace and tranquility. Case registered vide C.R. No.51 of 2005 has resulted in acquittal. The petitioner was forced to execute bond.

5. Learned APP submitted that, the show cause notice was issued on the basis of activities of the petitioner. The grounds urged in this petition cannot be considered at this stage. The petitioner has been called upon to show cause, why action under Section 110 (e)(g) should not be initiated against the Petitioner.

6. Chapter VIII of the Criminal Procedure Code deals with the production of security for keeping the peace and for good behaviour. Section 111 of Code of Criminal Procedure provides that, when a

Magistrate acting under Section 107, 108, 109 or Section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties required. Action is sought to be initiated under Section 110 (e)(g) which relates to security for good behaviour for habitual offender. As per the said provision when an Executive Magistrate receives information that there is within his local jurisdiction a person, who habitually commits, or attempts to commit, or abets the commission of offences, involving a breach of the peace, or is so desperate and dangerous as to render his being at large without security hazardous to the community. It is pertinent to note that the petitioner was recently arrested in C.R. No. 515 of 2022 registered with Pydhonie Police Station, Mumbai for offences punishable under Sections 304-A, 323, 504 read with 34 of the IPC. The earlier offence of 2005 has according to Petitioner resulted in acquittal. There is no material to initiate the proceeding. There is no material to substantiate that the Petitioner habitually commits, or attempts to commit, or abets the commission of offences, involving a breach of the peace. He is desperate and dangerous as to render his being at large without security hazardous to the community. Thus,

the notice/order under Section 111 of Cr.PC. issued by respondent with a view to initiate action under Section 110 (e)(g) of Cr.PC. is bad in law. In these circumstances, the impugned notice is required to be quashed and set aside.

ORDER

- (i) The Petition is allowed and disposed off.
- (ii) The impugned show cause notice dated 4th May 2022 bearing Chapter Case No. 19 of 2022 issued by respondent No.1 is quashed and set aside.

(PRAKASH D. NAIK, J.)