

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.4873 OF 2019**

Hanif Haji Adam Lulaniya & Ors.Petitioners.

Vs.

The State Of Maharashtra & Ors.Respondents

Mr. Ganesh Sovani with Vaishnavi Gawkar for the Petitioners.
Ms. J.S. Lohakare APP, for the Respondent-State.

**CORAM : A. S. GADKARI AND
MILIND N. JADHAV, JJ.
DATE : 18th NOVEMBER, 2022.**

P.C.:-

By this Petition, the Petitioners who are accused in Sessions Case No.15 of 2011 arising out of CR No.I-132 of 2010 dated 19th November, 2010 have prayed that, the offence registered against them may be re-investigaged in the light of Notarized Affidavit dated 9th February, 2011 filed by the Respondent No.5-Informant.

2) It is by now settled position of law that, the defence of the accused person, which requires adjudication of disputed questions of facts, cannot be adjudicated in a Petition under Article 226 of the Constitution of India. The Hon'ble Supreme Court in the case of *Union of India & Anr. Vs.*

W.N. Chadha, reported in AIR 1993 SC 1082, has categorically observed that, the accused person has no right to have any say as regards the manner and method of investigation.

3) In this background of settled position of law, the present Petition needs to be examined.

4) It is the contention of the Petitioners that, though the statement was made by the Respondent No.5 on 6th December, 2010 in Criminal Application No.5352 of 2010 for anticipatory bail that, the matter has been settled and he is going to file an Affidavit to that effect, such Affidavit was not produced before this Court and it was subsequently revealed to them under Right to Information Act, after six years of passing of the said Order dated 6th December, 2010. That, the present Petition is thereafter filed on 16th September, 2019.

5) We have perused photocopy of Order dated 6th December, 2010 and Affidavit-in-Reply dated 6th December, 2010 affirmed by the Respondent No.5, produced by Petitioners and placed on record. Perusal of Order dated 6th December, 2010 clearly reveals that, the statement made on behalf of Applicant therein .e. Javed Majid Lulania (Respondent No.3) has been recorded by this Court. The relevant portion of the said Order is reproduced hereinbelow for the sake of brevity.

“The learned counsel for the victim states that, the victim wants to settle the matter and would be filing affidavit to

that effect.”

6) Perusal of Affidavit-in-Reply dated 6th December, 2010 filed by Respondent No.3 and others indicates that, they have no objection for grant of pre-arrest bail to the Petitioner No.3 and others in Criminal Application No.5352 of 2010. That, the said Affidavit-in-Reply dated 6th December, 2010 has been duly affirmed before the Notary Registrar on 6th December, 2010 itself having registration at Serial No.7144 dated 6th December, 2010 in the Notarial Register. It is thus, *prima facie* clear that, the said document has been duly affirmed by the Respondent No.5 before the Notary in furtherance of his statement made before this Court on 6th December, 2010 as noted and recorded in Order dated 6th December, 2010 in Criminal Application No.5352 of 2010.

7) In view of the facts mentioned hereinabove, we are of the considered opinion that, the present Petition as filed is sheer abuse of process law and none else.

We therefore dismiss the present Petition by imposing cost of Rs.10,000/- each totalling to Rs.50,000/- upon the Petitioners. The said cost of Rs.50,000/- be paid to the Maharashtra Police Welfare Fund having its Account in the name of “*Maharashtra Centre Police Welfare Fund Account No.914010029005759, IFSC Code No.UTIB0000060, UTI Bank*” within a period of two weeks from the date of uploading of the present Order on the official website of Bombay High Court.

8) Petitioners are directed to produce on record/in the Registry, copy of the said receipt of payment of cost within a period of one week thereafter.

9) If the said cost is not paid within stipulated period, the Registry to inform the Superintendent of Police, Palghar to recover the said cost from the Petitioners as arrears of Land Revenue and deposit the same with the Maharashtra Police Welfare fund and submit its report to this Court.

List the Petition on 9th December, 2022 for compliance of payment of cost as noted above.

(MILIND N. JADHAV, J.)

(A.S. GADKARI, J.)

**SANJIV
SHARNAPPA
MASHALKAR**

Digitally signed by
SANJIV
SHARNAPPA
MASHALKAR
Date: 2022.11.23
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