

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.828 OF 2020

Shaikh Mukhid Shaikh Razzak @
Mukhid Lala

... APPLICANT

VERSUS

The State of Maharashtra & anr.

... RESPONDENTS

.....
Mr. S.J. Salunke, Advocate for applicant
Mr. R.B. Bagul, A.P.P. for respondents
.....

**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATE : 3rd AUGUST, 2023

ORDER :

Heard. This application has been filed for quashment of the F.I.R. bearing No.518/2019, registered with Shivaji Nagar Police Station, Beed for the offence punishable under Sections 307, 353, 332, 336, 143, 145, 147, 148, 149, 151, 152, 186, 188, 427 of the Indian Penal Code, section 3 of the Protection of Damage to Public Property Act, 1984, section 135 of the Maharashtra Police Act, 1951 and Section 7 of the Criminal Law Amendment Act and the consequential criminal proceedings bearing R.C.C. No.165/2021, pending before the learned Chief Judicial Magistrate, Beed.

2. In short, the case of the prosecution is that, in protest of Citizenship Amendment Act (CAA) and National Register of Citizens (NRC) Act, a Bandh was proclaimed at the city of Beed. It was 20th December 2019 by 3.00 p.m., a mob of 100/ 200 Muslim persons had gathered at Bashirganj Chowk. They were proceeding towards Shivaji Chowk. The members of the mob obstructed vehicular traffic and suddenly started pelting of stones at police on Bandhobast duty. By the very time, many of them started running away so as to save themselves. Two of the police constables on duty namely Bhagwat Sanap and Ramrao identified six of them. The present applicant is one of those six persons.

3. The learned A.P.P. would submit, what reason the present applicant had to be at the scene of crime even since before the crime took place. According to him, it is just difficult to identify each and everyone's role of a member of an unlawful assembly. For the offence of rioting or being a member of an unlawful assembly is sufficient for criminal liability, even no overt act is necessary.

4. The learned A.P.P. may be right in terms of legal provisions. One has, however, to go by the factual matrix. Although the crime was registered on the very day i.e. on 20th December

2019, statements of these two police constables who identified the present applicant, have been recorded 12 months thereafter. Admittedly, one of the constable was attached to the very police station with which the crime has been registered. It is surprising that, none of them came forward on their own to claim to have identified certain persons including the present applicant.

5. Even we take their statements as it is, what they claimed to have seen is, the present applicant was one of those 100/ 200 persons who took to their heels to save themselves. As such, it is difficult to observe from the material on record that the present applicant was even a member of an unlawful assembly, for being prosecuted for the said offence. For want of such material, we have no option but to allow the application.

6. Mr. Bhagwat Sanap is present before this Court. He watched the Video, but could not identify the applicant herein. His presence is discharged. Hence, the application is allowed in terms of prayer clauses (C), (C-1) and (C-2) to the extent of the present applicant.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-