

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

CRIMINAL WRIT PETITION NO.522 OF 2023

**ANITA W/O. RAJKUMAR SARTAPE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioners : Mr. Uttam L. Telgaonkar
APP for Respondents - State : Mr. M. M. Nerlikar
. . .

**CORAM : MANGESH S. PATIL AND
ABHAY S. WAGHWASE, JJ.**

DATED : 25 APRIL 2023

PER COURT :

. Learned APP tenders across the bar the affidavit-in-reply. It is taken on record.

2. Heard both sides.

3. The petitioners are the villagers of Hingni, Taluka and District Hingoli. They are impugning the order passed by the respondent no.4 rejecting their request for taking out procession to celebrate 132th birth anniversary of Bharat Ratna Dr. Babasaheb Ambedkar on 29.04.2023 between 1.00 p.m. to 5.00 p.m., including permission to play loudspeaker, on the ground that in spite of the route having been earmarked while granting similar permission in the last year, it was not followed and in breach the procession

was taken along a different route for which Crime No.168 of 2022 for the offences punishable under sections 143, 147, 149, 188 and 186 of the Indian Penal Code was registered on the very next date i.e. on 30.04.2022.

4. Pertinently, all the three petitioners have been arrayed in that crime as accused.

5. Learned advocate for the petitioners Mr. Telgaonkar submits that merely because of the perception of the police machinery, permission is being refused. It is the right of the citizenry to celebrate the birth anniversary even by taking out the procession. Their fundamental right and liberty cannot be curtailed and regulated in the manner as is being done. If, the police machinery is apprehensive of a law and order problem, they can take necessary steps to maintain. He would also submit that irrespective of the happenings on the last occasion, the petitioners are ready to take out the procession strictly along the route earmarked for that purpose while granting fresh permission this year.

6. Learned APP referring to the affidavit-in-reply strongly opposes the petition. He submits that apart from the fact that the petitioners and few other miscreants had indulged in gross illegality and created a law and order problem by allowing the procession to be taken out along some different

route, even there are couple of individuals who are hellbent in instigating the villagers by circulating offensive and coloured messages on the social media. Preventive actions have already been taken against both the individuals in the form of registration of FIR. One out of them has been arrested and released on bail. He would submit that even the majority of the villagers are equally apprehensive of there being a likelihood of a serious law and order problem. He also points out the resolution passed by the Gramsabha. In the normal course, the police machinery would not have raised any objection for granting permission for taking out the procession, however, going by the history and the present scenario wherein couple of individuals have been indulging in instigating the villagers, there is a possibility of some of the outsiders still entering into the procession and disturbing the peace.

7. We have considered the rival submissions and perused the papers.
8. Obviously, one cannot have two opinions that strict steps for maintaining law and order need to be taken. The police machinery which is meant to maintain law and order situation, may have its own reasons to anticipate certain things which according to them would disturb the peace and public order.
9. However, simultaneously, it is the responsibility of the police

machinery to preempt anything which is likely to lead to disturbance of public peace. Their inability to preserve the law and order situation cannot be a ground to refuse permission to take out the procession. While granting permission they can impose conditions as per their discretion, like preventing weapons to be taken or laying down the route for the procession etc. We are merely quoting these as instances and we should not be understood as imposing certain conditions on our own, which is the job of the authorities granting permission.

10. We are concerned with the situation wherein some villagers are intending to celebrate the birth anniversary of father of our Constitution and intend to take out the procession. Preventing it to be so taken out on the ground of law and order problem, to our mind, is not unjustifiable.

11. We allow the petition partly and quash and set aside the order refusing the permission to take out the procession. We direct the respondent no.4 to reconsider the request of the petitioners and to pass a fresh order in the light of the above observations, imposing suitable conditions as are necessary for preserving law and order situation, including earmarking the route along which the procession is to be taken. The decision shall be taken expeditiously well before 28.04.2023.

12. The petitioners shall furnish an undertaking to this court that they will not indulge in any activity that would be prejudicial to the public order and would not themselves create law and order situation and would abide by all the conditions to be imposed while granting the permission. The undertaking shall be filed in this court by tomorrow.

13. Parties to act on authenticated copy of this order.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)