

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

CRIMINAL APPLICATION NO.2417 OF 2021

Gurdeepsingh s/o Harvindarsingh ... **APPLICANT**

VERSUS

The State of Maharashtra & anr. ... **RESPONDENTS**

.....
Mr. S.V. Bhopi, Advocate holding for
Mr. V.B. Dhage, Advocate for applicant
Mr. M.M. Nerlikar, A.P.P. for respondents
.....

**CORAM : SMT. ANUJA PRABHUDESSAI AND
 R.M. JOSHI, JJ.**

DATE : 23rd JANUARY, 2023

P.C. :

Taken up for final hearing with the consent of learned
counsel for the respective parties.

2. This is an application under Section 482 of the Code of
Criminal Procedure to quash First Information Report bearing Crime
No.0392/2020, registered at Vimantal Police Station, District
Nanded for the offences punishable under Sections 3 and 25 of the
Arms Act, 1959.

3. Heard learned counsel for the applicant and learned

A.P.P. for the respondents. We have perused the record and considered the submissions advanced by learned counsel for the respective parties.

4. The question for our consideration is whether the First Information Report and other material collected in the course of investigation reveal a cognizable offence as stated in the First Information Report.

5. The records reveal that on 15/12/2020, the applicant and the other co-accused were proceeding from Nanded to Amritsar. It is stated that, when the jacket of the co-accused was being screened at Nanded Airport, three live cartridges were discovered. While he was being questioned, the applicant and the other co-accused questioned and abused the security officer. It is on the basis of these allegations the crime has been registered not only against the person who was found to be in possession of the ammunition but also against this applicant and other co-accused who had allegedly threatened the security officer.

6. It is to be noted that Section 3 of the Arms Act provides that no person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of the Act and the rules

made thereunder. It is not in dispute that the applicant was not in possession of the arm or ammunition. The only allegation against the applicant is that, he was travelling along with the co-accused who was found to be in possession of the arm. The First Information Report or other material on record do not indicate that the applicant was otherwise aware that the co-accused was in possession of the live cartridges. In such circumstances, the offence under Section 3 of the Arms Act is not made out.

7. Sub-section (1-a) of Section 25 of the Act provides that, whoever manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of Section 5; shall be punished with imprisonment as prescribed under the said Section.

8. In the instant case, the material on record as well as the other material do not disclose that the applicant was in possession of the firearms. The First Information Report and other material do not disclose the essential ingredients of Sections 3 or 25 of the Arms Act. Under these circumstances, the case is covered under illustrations (1) and (3) of the guidelines issued by the Hon'ble Apex Court in case of **State of Haryana & ors. Vs. Ch. Bhajan Lal [AIR 1992 SC 604]**, which read as under :

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) x x x x x x x

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

9. In such circumstances, compelling the applicant to face the trial of the criminal proceedings pursuant to the questioned First Informant Report will be abuse of process of Court. Hence, the Criminal Application is allowed. The First Information Report bearing Crime No.0392/2020, registered at Vimantal Police Station, District Nanded for the offences punishable under Sections 3 and 25 of the Arms Act, 1959 is quashed qua this applicant.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

fmp/-