

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

961 CRIMINAL APPLICATION NO.2890 OF 2021

ABDUL SAMAD ABDUL SATTAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. G.R. Syed
APP for Respondents: Mr. P.G. Borade

.....

AND
961 CRIMINAL WRIT PETITION NO. 407 OF 2022

SHAIKH MAHBOOB SHAIKH BIBAN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. R.B. Narwade Patil
APP for Respondents: Mr. P.G. Borade

.....

**CORAM : R. G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 22nd JUNE, 2023.**

PER COURT :-

1. Both these matters have been moved for quashment of F.I.R. No. 118 of 2021 registered with Purna Police Station, district Parbhani, for the offences punishable under Sections 307, 353, 186, 379, 341 r.w. 34 of I.P.C. and Section 48(7) (8) of the Mines and Minerals Act and consequential proceeding bearing R.C.C. No. 163 of 2021 filed in the court of J.M.F.C. Purna.

2. Heard the learned advocates for the respective parties.

3. The F.I.R. has been lodged by the police official attached with anti terrorist squad, in the office of the Superintendent of Police, Parbhani. According to the informant, the Superintendent of Police received a tip about unauthorized excavation of sand in the river bed of Purna river. On 24.3.2021, the informant alongwith some other police staff, therefore, remained on vigil on road near Ayurvedic Medical College to Haddi Karkhana at Purna. They noticed, one tipper (four wheeler) approaching from river bed. The informant and his companion therefore, indicated the tipper driver to stop. He did not listen. The driver of the tipper (co-accused) Shaikh Babbar Shaikh Biban took the tipper towards the informant with a view to run him over. The informant with a view to save himself jumped on the other side of the road. He then noticed tipper to have entered the Haddi factory. They therefore, went to the factory gate. The watchmen were there. They asked the watchmen to allow them to enter the factory premises. The watchmen did not allow them to enter and asked them to get permission of the Manager. He therefore, asked the informant and his companions to talk to one Samad (the applicant in criminal application No. 2890 of 2021). According to the informant, he and his companions had talk with these two applicants. In short, according to the prosecution, the applicants herein did not allow them to enter the factory premises and therefore, they obstructed them in discharging their official duties.

4. So far as the allegations against the petitioner Shaikh Maheboob Shaikh Biban (criminal writ petition No. 407 of 2022) are

concerned, he has not been attributed with any overt act. The crime, which he has allegedly committed was of his presence in the tipper and nothing more than that. Since no other criminal act has been attributed to him, the petition deserves to be allowed. The same is the case about applicant Abdul Samad Abdul Sattar (in criminal application No. 2890 of 2021). At the relevant time, he was at his residence. The companions of the informant had talk to him so as to secure entry in the factory premises. He refused to allow them to enter in the factory premises, since according to him, permission of the factory owner was required. We failed to understand as to how the applicants refusal to allow the police officials to enter the factory premises without the permission of his employer (factory owner), constitutes offence punishable under sections 353, 186 etc. The present applicants have no way connection with the offence punishable under Section 307 of I.P.C. As such, both the matters deserve to be allowed.

5. There is similarly placed co-accused Suleman. He is not before the Court. The trial court shall grant him relief, i.e. shall not frame charge against him/grant discharge.

6. In the result, criminal application No. 2890 of 2021 is allowed in terms of prayer clause "B" and criminal writ petition No. 407 of 2022 is allowed in terms of prayer clause "b" and disposed of accordingly.

(SANJAY A. DESHMUKH, J.)

(R. G. AVACHAT, J.)