

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1 CRIMINAL WRIT PETITION NO.1483 OF 2023

SURESH DAMU BHOLE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr.Patil Vinod Prakash
PP for Respondent/State : Mr.D.R. Kale
.....

**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 21st SEPTEMBER, 2023.**

PER COURT :-

- . Heard.
2. This petition has been filed for the following relief :-

B) This Hon'ble Court by way of writ, order or directions in the like nature, be please to grant permission/consent as per clause 5 and clause 6 (iii) of GR dated 20.09.2022 and clause No.4 & 5 (अ) of GR dated 20.09.2022 annexed at Exh.C for taking back/disposal of complaints filed against petitioners;".
3. According to learned advocate for the petitioners, the crimes in question did take place during the corona pandemic. All these crimes get covered by the Government Resolution dated 20th

September, 2022, whereby the State Government has constituted a committee to take decision as regards withdrawal of such prosecutions. He further submits that the Committee so constituted had taken a decision to withdraw all those prosecutions pending against the petitioners herein.

4. It is also submitted by the learned advocate that the Hon'ble Apex Court in the case of ***Ashwini Kumar Upadhyay Vs. Union of India and another*** reported in ***2021 SCC Online SC 629*** has directed that such crimes shall not be permitted to be withdrawn except with the consent of the High Court concerned.

5. The learned Public Prosecutor concedes the aforesaid position. He also submits that as soon as the Court grants permission to withdraw all those crimes, the Prosecutor Incharge of all those cases would move an application for withdrawal of the prosecutions.

6. On merits, there is another aspect of the matter, the petitioners are proposed to be prosecuted under section 188 of the Indian Penal Code and section 135 r/w 37 (1)(3) of the Maharashtra Police Act, 1951.

7. For prosecution of the offence punishable under section 188 of the Indian Penal Code, there is interdict of section 195 of the Criminal Procedure Code, no Court can take cognizance of prosecution for offence punishable under section 188 of the Indian Penal Code except upon a complaint lodged by the public servant or

his duly instructed subordinate. So far as regards offence under section 135 r/w 37(1)(3) of the Maharashtra Police Act, the same is non-cognizable while cognizance has been taken on police report under section 173 of the Criminal Procedure Code.

8. In view of the above, we allow the Writ Petition in terms of prayer clause "B".

9. Parties to act upon authenticated copy of this order.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

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