

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

CRIMINAL APPLICATION NO.4385 OF 2022

1. Akshay s/o. Bhaskar Kamthe,
2. Sachin s/o. Kakasaheb Kamthe,
3. Navnath s/o. Eknath Mhaske ..Applicants

Vs.

The State of Maharashtra
and anr. ..Respondents

Ms.Poonam Bodke-Patil, Advocate for applicants
Mr.R.V.Dasalkar, APP for respondent no.1

**CORAM : R.G.AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATE : JULY 20, 2023**

ORDER :-

Learned counsel for the applicants, on instructions, does not press prayer clause (E).

2. This application under Section 482 of the Code of Criminal Procedure is for quashment of the R.C.C. No.102 of 2019, pending on the file of learned Chief Judicial Magistrate, Aurangabad, for the offences punishable under Sections 307, 353, 333, 143, 147, 148 and 149 of Indian Penal Code; Sections 3 and 4 of the Maharashtra Prevention of Defacement of Property Act, 1995; Section 7 of Criminal Law Amendment Act; and Section 135 of the Maharashtra Police Act.

3. The applicants were alleged to be the members of unlawful assembly, indulged in pelting of stones at police officials at Bandobast, passers-by and the vehicles (public property) on the day of birth anniversary of Chhatrapati Shivaji Maharaj.

4. The FIR has been lodged by the Police Inspector, CIDCO Police Station, on 23.02.2018. The alleged incident took place between 10.00 p.m. and 11.30 p.m. on 22.02.2018. It has been alleged in the FIR that there was a huge crowd at Pundlik Nagar road, Aurangabad. Members of the crowd indulged in pelting of stones on the passers-by, staff of State Reserve Police Force and the police officials as well. The police officials were requesting the members of the mob to disperse. None of them, however, listened. The vehicles on the road have been damaged. Some of the police staff on duty were injured as a result of pelting of stones.

5. The FIR has been lodged against unknown persons. The informant gave supplementary statement after 10 days of lodging of the FIR, wherein, he gave names of the members of the unlawful assembly, who were indulged in pelting of stones/rioting. Present applicants are some of those named in the supplementary statement.

6. Close reading of the police papers, i.e. statements of the persons acquainted with the facts and circumstances of the case, we could not come across of anyone stating the applicants to have been members of the said unlawful assembly.

7. To our pointed query, learned APP would submit that the involvement of present applicants was learnt through a secret tip-off.

8. True, the police officials have privilege not to disclose the source of the information. The fact, however, remains that there is no material to suggest any of the applicants to have been members of such unlawful assembly, indulged in stone pelting/rioting. As such, directing the applicants to stand trial based on no material, would be an abuse of process of the Court.

9. The application is allowed in terms of prayer clause (A)

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP