

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1116 OF 2020

Sachinkumar Vedpal Singh, |
Age : 32 yrs., Occ. : Service, |
Was residing at Room No.307, |
"B" Wing, Devshrishti, Building No.2, |
Nalasopara (West), Dist. Palghar |
(from the year 2017-2019) |
Presently r/at Village – Bhokarheri, |
Post – Bhokarheri, Dist. Muzaffarnagar (U.P.) | .. Petitioner

Versus

1. The State of Maharashtra, |
Through C.S.T. Railway Police Station, Mumbai |
2. Mujeem Ahmed Khan, |
Age : 24 years, Occ. : Service, |
R/at Tanvir Mohammed Khan's office, |
Royal Chicken Centre, Siddique Building, |
Shop No.2, Dadasaheb Phalke Road, |
Dadar (East), Mumbai – 400 014. | .. Respondents

Mr. Prashant Pandey, with Mr. Irfan Unwala, Mr. Aiyen Memon and
Mr. Dinesh Jadhvani, for the Petitioner.

Mr. K.V. Saste, APP for Respondent No.1-State.

Mr. Amit Tiwari for Respondent No.2.

CORAM : SUNIL B. SHUKRE & M.M. SATHAYE, JJ

DATE : 31ST MARCH, 2023.

ORAL JUDGMENT : { Per Sunil B. Shukre, J. }

1. RULE. Rule made returnable forthwith. Heard finally by consent of
learned counsel for the petitioner, learned counsel for respondent no.2 and
learned APP for the respondent-State.

2. The learned counsel for the petitioner submits that there is absolutely no evidence available on record on the basis of which the petitioner could be said to have been involved in commission of the offence punishable under Section 384 r/w. 34 of the IPC, even in a prima facie manner. He points out that except for the accused who was apprehended on the spot by the passengers, there was no identity established in respect of the other three accused persons as they managed to flee away from the scene of occurrence. He submits that even though the key prosecution witness – Mujim Ahmed Khan provided description of those three accused persons, who have fled away from the spot, no efforts whatsoever were made by the Investigating Officer in establishing properly their identity and then arraigning them as accused persons in the present crime.

3. On going through the charge-sheet, copy of which is available on record, we find great substance in the arguments of learned counsel for the petitioner. Mujim Ahmed Khan had indeed provided description of the three run-away accused persons, but, the Investigating Officer did not encash upon it. It is seen that he made no efforts whatsoever in identifying the run-away accused persons and then probe them in the present crime. It is an admitted fact that the witnesses who had an occasion to see the incident in question, did not know any of the accused persons. However, one accused person, Vinod Namdeo Chavan, was captured by the passengers at the spot itself and it was only because of his being detained by the passengers that ultimately his name could be ascertained and identity could also be established. But, the victims of crime

were not so fortunate in respect of three arraigned persons who were also actively involved in commission of the offence of extortion. These three accused persons, if one goes by the version of the key witness – Mujim Ahmed Khan, were somehow kept under restraint by the passengers, but, these three accused persons, after some point of time, when the train had slowed down as it was approaching Kalyan Railway Station, succeeded in freeing themselves from the clutches of the passengers. These three accused persons succeeded in jumping out of the running train, probably it was moving at a slow pace as it was about to take halt at Kalyan Railway Station.

4. The material available on record further shows that some time thereafter, the Investigating Officer caught hold of the three accused persons and one of them is the present petitioner. The question is on what basis the Investigating Officer could have convinced himself that this petitioner was indeed the person who was involved in the present crime. For this purpose, Test Identification Parade could have helped the prosecution in a great way. But, that has not been admittedly held. So, it would be necessary for the Investigating Officer to rely upon some other material from which one can reasonably come to the conclusion that the present petitioner was one of the persons involved in the present crime. We have, however, not come across any such material which indicates that there is a reasonable possibility of the petitioner being there at the scene of crime and participating in commission of the present offence. We also made enquiry with the learned APP, who, in turn, consulted the present Investigating Officer, but, neither the present Investigating Officer nor the

learned APP could show us any such material having been present on record. Unless and until it is established in a prima facie manner that the person being prosecuted is an accused, who was involved in commission of the crime, no trial against such a person can be held and if it is held, it would be an exercise in futility with a forgone conclusion about acquittal of such a person. This possibility is real in the present crime and, therefore, we find substance in the petition.

5. In our considered opinion, it would not be in the interest of justice to allow the trial of the petitioner to proceed further for the reasons stated earlier. The petition deserves to be allowed. Accordingly, we pass the following order :-

- (i) The petition is allowed in terms of prayer clause (a), which reads as under :-

(a). That this Hon'ble Court be pleased to quash and set aside the Charge-Sheet dated 27/08/2019 vide C.C. No.1097/PW/2019 FIR No.113/19 against the petitioner u/s. 384 r/w. Sec. 34 of Indian Penal Code, 1860."

- (ii) Rule is made absolute in the above terms.

[M.M. SATHAYE, J.]

[SUNIL B. SHUKRE, J.]