



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1270 OF 2022

Rahul Kishor Chauhan

... Petitioner

V/s.

State Of Maharashtra

... Respondent

Mr. K. S. Labana a/w Mr. Viral Mukte for Petitioner.

Mrs. S. D. Shinde, APP for Respondent-State.

Mr. Rahul D. Patil, PSI, Ulhasnagar Police Station is present.

CORAM : A.S. GADKARI AND
SHARMILA U. DESHMUKH, JJ.

DATE : 28th AUGUST, 2023.

PC. :

1) By the present Petition, under Article 226 of the Constitution of India, Petitioner, accused in C.R. No. 0454 of 2020 registered with Ulhasnagar Police Station, District Thane, under Sections 326, 324, 323, 504 and 506 read with Section 34 of the Indian Penal Code, is seeking relief of quashing of the said crime.

2) Heard Mr. K. S. Labana, learned Advocate for Petitioner at length and Mrs. S. D. Shinde, learned APP for Respondent-State. Perused entire record produced before us.

3) At the outset, learned APP on instructions from the concerned Police Officer submitted that, after completion of investigation of present crime, police have filed charge-sheet in the Court of competent jurisdiction.

She further submitted that, Anticipatory Bail Application of Petitioner has been rejected by this Court and the Petitioner is absconding.

4) As the charge-sheet has already been filed in the present case, at the inception of arguments, we pointed out to the learned Advocate for Petitioner that, Petitioner is having alternate statutory remedy as contemplated under the provisions of Cr.P.C. and he may avail the same. It was also pointed out that, the defence of Petitioner can not be tested in a Writ Petition under Article 226 of the Constitution of India and/or in an Application under Section 482 of the Cr.P.C. Despite the said settled legal position, he submitted that, this Court may adjudicate the merits involved in the Petition.

4.1) We also pointed out to the learned Advocate for the Petitioner, the recent decisions of the Hon'ble Supreme Court namely, (i) Central Bureau of Investigation V/s. Aryan Singh, dated 10th April, 2023 passed in *Criminal Appeal No.1025-1026 of 2023 (@ SLP (CRL.) NOS. 12794-12795 of 2022)* (ii) Manik B. V/s. Kadapala Sreyes Reddy And Anr. dated 7th August, 2023 passed in *SLP (Crl) No. 2924 of 2023*.

4.2) In the case of C.B.I. V/s. Aryan Singh (*Supra*) the Hon'ble Supreme Court has held that, while deciding an Application under Section 482 of Cr.P.C., the High Court can not conduct a mini trial. That, as per the cardinal principle of law, at the stage of discharge and/or quashing of criminal proceedings, while exercising powers under Section 482 of Cr.P.C., the Court is not required to conduct a mini trial.

4.3) In the case of Manik B. V/s. Kadapala Sreyes Reddy And Anr. (*Supra*) the Hon'ble Supreme Court has held that, the Court would exercise its power to quash the proceedings only if it finds that taking the case at its face value, no case is made out at all. It is further held that, it is not permissible for the High Court to go into the correctness or otherwise of the material placed by the prosecution in the charge-sheet.

4.4) We have also pointed out to him that, the informant has not been implicated as necessary party-Respondent in the present Petition, however learned Advocate for Petitioner persistently insisted this Court to decide the Petition on merits.

4.5) In this admitted premise, we have heard learned Advocate for Petitioner at length.

5) The First Information Report (FIR) is lodged by Mr. Raisaheb R. Yadav. It is the prosecution case that, on 20th December, 2020, one Mr. Yadav was parking his Auto-Rickshaw in front of his house in a lane at about 10.40 p.m. At that time, it inadvertently dashed Aashish Chavhan a co-accused. Aashish Chavhan therefore abused Mr. Yadav in filthy language and a quarrel ensued. The informant/victim was passing from the said lane and after seeing the said quarrel, he tried to pacify it. At that time, the Petitioner came out of his house with a sharp edged weapon and assaulted on the head of the victim with it. Mr. Lalsaheb Yadav, brother of victim tried to intervene in the said fight, it is alleged that, however Petitioner also assaulted him on the left side of his stomach. Likewise Petitioner assaulted

one Mr. Jitesh Yadav also. That, other three co-accused assaulted the injured witnesses with iron rod and knife. The victim and other injured witnesses were thereafter admitted to Life Care Hospital. In this brief premise, present crime is registered.

6) Learned Advocate for Petitioner submitted that, on the date and time of incident, Petitioner was not at the scene of offence and was 5 k.m. away. He submitted that, the eye witnesses are not telling truth and deposing falsely against him. That, Medical Certificates issued by the concerned Medical Officer are not genuine. He submitted that, police have not submitted charge-sheet *qua* the Petitioner. That, the Petitioner has been falsely implicated in the present crime and therefore prayed that, present crime may be quashed.

7) Perusal of record indicates that, in the present crime, there are two injured witnesses and three other eye witnesses. Medical Certificate of informant Mr. Raisaheb R. Yadav issued by the Medical Officer, Central Hospital, Ulhasnagar-3 mentions the following injuries :

2 CLWs to frontal region of scalp.

7.1) The Medical Certificate issued in favour of Mr. Lalsaheb Yadav i.e. the other injured witness mentions the following injuries :

1. Stab injury on left lumbar region,
2. Contused lacerated wound on left thigh,
3. Abrasion on supraumbilical region and
4. two penetrating injuries on jejunum region.

8) We see no reason to disbelieve the version of injured witnesses and other witnesses. The version of injured witnesses is duly corroborated by the Medical Certificates. There are three other eye witnesses to the alleged incident. *Prima-facie* it appears that, there is no reason for the injured witness to indict Petitioner in the present crime and their statements *prima-facie* appears to be reliable. There is more than sufficient, rather overwhelming material against Petitioner not only to submit charge-sheet but even to frame charge against him.

9) From the pleadings and arguments of learned Advocate for the Petitioner it is apparent that, the Petitioner intends that, this Court should adjudicate his defence in a Petition under Article 226 of the Constitution of India, which is not permissible in law.

10) After taking into consideration the facts of the present case and principles of law laid down by the Hon'ble Supreme Court in the aforesaid cases we find that, a strong *prima facie* case against the Petitioner is made out by the prosecution. This is not a fit case to quash the FIR and further proceedings therefrom.

11) Petition is accordingly dismissed.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)