

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] NO. 1579/2022.

Manoj s/o Ramesh Tarar,
Aged 35 years, Occupation -
Service, resident of Plot
No.60, Dhobale Kirana
Store, Jalram Mangal Karyalaya,
Hiwari Nagar, Nagpur.

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APPLICANT.

VERSUS

1.State of Maharashtra,
through Police Station Officer,
Police Station Nandanwan,
Nagpur.

2.Kalimullah Khan s/o Amanullah
Khan, Aged 46 years, Occupation -
S.T. Bus Driver, resident of Thakur
Plot Plot No.140, Bidipeth,
Tajbagh, Nagpur.

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NON-APPLICANTS.

Mr. C.B. Barve, Advocate for the Applicant.
Mr. V.A. Thakare, A.P.P. for Non-applicant No.1/State.

CORAM : VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.

DATE : APRIL 17, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard finally by consent of the learned Counsel present for the parties. Service of notice upon non-applicant no.2 is dispensed with.

Admit.

2. This is an application seeking to quash the first information report bearing Crime No.155/2008 registered with Nandanwan Police Station, Nagpur for the offence punishable under Sections 143, 147, 427, 336 of the Indian Penal Code, Section 135 of the Bombay Police Act and Sections 3 and 4 of the Prevention of Damage to Public Property Act, along with related charge sheet in Regular Criminal Case No.304034/2008 pending on the file of Chief Judicial Magistrate, Nagpur.

3. The incident is quite old of the year 2008 occurred on a public road. The informant, a S.T. Bus driver at the relevant date and time was proceeding by the State Transport Bus bearing

Rgd.

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registration No.MH-04-9725 from Nagpur towards Kuhi-Mandal. On that day Bharat Band was called. When the S.T. bus came near telephone exchange chowk, Dighori, 8 to 9 persons accosted the bus and pelted stones, thereby causing damage to the public property worth Rs.4000/-. The assailants were in the age group of 18 to 30 years. Accordingly the report was lodged. The police have investigated the matter and filed charge sheet before the competent Court.

4. It is informed that though the charge sheet was filed in the year 2008, till date charges have not been framed. It is the contention of the applicant that his name is not mentioned in the first information report nor in the police statements. The test identification parade has not been conducted. Moreover, it is submitted that the applicant was shown to the informant at police station, therefore, subsequent identification in Court would be meaningless. In substance it is argued that there are no chances of conviction even if the prosecution case is accepted as it is.

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5. The learned Counsel appearing for the applicant by placing reliance on the decision of Supreme Court in case of **Shaikh Umar Ahmed Shaikh and another .vrs. State of Maharashtra – [1998] 5 SCC 103**, would submit that though the identification parade is a substantive piece of evidence, however, no value can be attached if there is possibility of showing accused before holding the test identification parade. In case at hand admittedly prior test identification parade has not been conducted. The informant has only referred that 8-9 unknown persons have pelted stones on the bus. Though there are two statements of bus conductor, they have not stated name of the applicant. The applicant has pointed out towards the station diary extract, which bears a reference that the informant has identified the assailant at the police station. In the wake of such material the identification of the applicant in the Court if any, would be tainted one.

6. Having regard to the nature of accusation and material against the applicant, even if the contentions are accepted, the chances of conviction are remote and bleak. Moreover, again there

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would be a question of reliability of identification after a lapse of 14 years from the date of occurrence. Continuation of such prosecution certainly amounts to an abuse of the process of the Court. In view of above, we are satisfied that a case to invoke our inherent jurisdiction has been made out. Accordingly we allow the Criminal Application and pass the following order.

ORDER

- [i] Criminal Application is allowed and disposed of.
- [ii] The first information report bearing Crime No.155/2008 registered with Nandanwan Police Station, Nagpur for the offence punishable under Sections 143, 147, 427, 336 of the Indian Penal Code, Section 135 of the Bombay Police Act and Sections 3 and 4 of the Prevention of Damage to Public Property Act, along with related charge sheet in Regular Criminal Case No.304034/2008 pending on the file of Chief Judicial Magistrate, Nagpur is hereby quashed and set aside, so far as it relates to the applicant – Manoj Ramesh Tarar only.

JUDGE**JUDGE**