



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

CRIMINAL WRIT PETITION NO.1077 OF 2021

- 1) Sau. Dr. Mamta Mahendra Kabra,
Age-57 years, Occupation: Doctor,
10, Jilha Peth, Court Square,
Jalgaon,
- 2) Dr. Prashant Subhash Somani,
Age-39 years, Occupation: Doctor,
- 3) Dr. Rachna Prashant Somani,
Age-35 years, Occupation: Doctor,

Petitioner Nos.2 and 3 are
Resident of Sarva Mangal Hospital,
13/B, Vivekanand Nagar,
Swatantra Chowk, District-Jalgaon.

...PETITIONERS

VERSUS

- 1) Union of India,
Through its Ministry of Electronics
and Information Technology,
Unique Identification Authority of
India, Regional Office, 7th Floor,
MTNL Exchange Building,
G.D. Somani Marg, Cuffe Parade,
Mumbai-400 005,
- 2) Union of India,
Through its Ministry of Revenue
and Finance, Department of Income
Tax (PAN issuing authority),
New Delhi,
- 3) The State of Maharashtra,
Through its Secretary for
Ministry of Home Affair, Mumbai-1,

- 4) The Commissioner of Police, Nashik,
Taluka and District-Nashik,
- 5) Superintendent of Police, Jalgaon,
Taluka and District-Jalgaon,
- 6) Police Inspector,
Police Station, Jilla Peth,
Taluka and District-Jalgaon,
- 7) Ajinkya S/o Nitin Kabra,
Age-20 years, Occu:Student,
R/o C/o- Babulal Mantri,
Near Ram Mandir, At Post-Badnapur,
District-Jalna – 431202.

...RESPONDENTS

...
Ms. Rashmi S. Kulkarni Advocate a/w. Ms. Namita Thole
Advocate for Petitioners.
Mr. S.S. Deve, Standing Counsel for Respondent Nos.1 and 2.
Mr. V.K. Kotecha, A.P.P. for Respondent Nos. 3 to 6.
Mr. P.R. Katneshwarkar, Senior Counsel i/b. Mr. Rahil Kazi
Advocate for Respondent No.7.

...
**CORAM: SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

DATE OF RESERVING JUDGMENT : 28th NOVEMBER 2024

DATE OF PRONOUNCING JUDGMENT : 18th DECEMBER 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the respective parties finally, by consent.

2. Present Petition has been filed invoking the constitutional powers of this Court under Article 226 of the Constitution of India, for following reliefs:-

“(B) By issuing a writ of mandamus, order, directions in the like nature be pleased to direct respondent No.1 and 2 to furnish the details as requested by respondent No.6.

(C) By issuing a writ of mandamus, order, directions in the like nature be pleased to direct the respondents to register the F.I.R. on the complaints dated 27.06.2018 which is annexed to the present petition as Exhibit “B”.

(D) By issuing appropriate writ, order, direction the respondent No.6 may kindly be directed to start preventive proceedings under the Criminal Procedure Code on basis of complaint dated 27.06.2018 which is annexed to the present petition.”

3. At the outset we would like to say that there appears to be a complaint filed by petitioner No.1 on 27th June 2018 with respondent No.6 wherein some preliminary inquiry appears to have been tried to be made, which is now giving rise to the present Petition and therefore, some background is required to be taken note of.

4. Petitioner No.1 is a medical practitioner and petitioner No.3 is her daughter. Petitioner No.2 is the husband of petitioner No.3 and son-in-law of petitioner No.1. Petitioner Nos.2 and 3 are also medical practitioners. The petitioners are coming with the case that an immovable property within the jurisdiction of Jalgaon Municipal Corporation was initially owned by deceased Nitin Kabra, who was the brother-in-law of petitioner No.1 and father of respondent No.7. According to the petitioners, as the legal representatives of deceased Nitin were unable to pay the installments of mortgage over the said immovable property, they had gifted the same to petitioner No.1 by registered gift deed dated 14th October 2009. Petitioner No.1 and her husband, who is also medical practitioner, had jointly repaid the dues of deceased Nitin Kabra and cleared the mortgage. Petitioner No.1 had then started Clinic in the said property. It is then stated that widow of deceased Nitin Kabra (who had remarried and in the said remarriage petitioner No.1 and her husband had helped her), challenged the said gift deed by filing R.C.S. No.793 of 2012 before the learned Civil Judge, Senior Division, Jalgaon. No steps were taken for any orders in the said suit, but there was then an illegal attempt to secure the possession of the said property by breaking the locks of the Clinic in 2015. In respect of

the said incident, the husband of petitioner No.1 had lodged the First Information Report (for short "the FIR") vide Crime No.32 of 2015 and it came to be registered for the offence punishable under Sections 454, 380, 511 of the Indian Penal Code. The petitioners further contend that petitioner Nos. 2 and 3 purchased the said property for constructing the hospital by registered sale deed dated 22nd September 2020. The opponents arrayed as accused as per complaint dated 27th June 2018 were never in possession of the said property which was gifted to petitioner No.1 and sold to petitioner Nos.2 and 3. However, according to the petitioners, accused No.2, as named in the complaint – Manisha Omprakash @ Babulal Mantri, who is a practicing Advocate and registered Notary, had secured Aadhaar Cards and PAN Cards by illegally showing the property to be standing in her name. Petitioner No.1 came to know about the said fraud when the Aadhaar Cards and PAN Cards were delivered at the address of the said property. According to the petitioners, the address given in those documents was never the address of the Card holders including respondent No.7 and therefore, when the said complaint was lodged on 27th June 2018, a preliminary inquiry was tried to be made by respondent No.6, but respondent Nos. 1 and 2 refused to give the details

contending that the information about the card holder is confidential and cannot be shared with anybody, even with the investigating agency, unless there is order from the High Court. According to the petitioners, those fake documents have been created just to create proof of residence and to mislead the authorities. While obtaining those cards, the Government of India has been misled. Therefore, it is necessary to register the FIR on the basis of complaint dated 27th June 2018. The said complaint had disclosed cognizable offence and therefore, in view of *Lalitakumari vs. State of U.P., 2013 All MR (Cri.) SC 4444*, the FIR ought to have been registered.

5. The learned Advocate appearing for the petitioners has taken us through the documents and vehemently submitted that the original Aadhaar Cards and PAN Cards of respondent No.7 showing the address of the property of the petitioners is in possession of petitioners. Therefore, it is certain that the documents which were attached at the time of obtaining those cards filed by respondent No.7 or on his behalf by somebody, are forged documents or false documents. Though the civil suit is pending, the gift deeds have not yet been cancelled by any competent Court. Along with the gift deed, possession of the

property was handed over to petitioner No.1 and since then the petitioners are enjoying the property. If documents are created by misleading even the Government, then it is a serious offence and therefore, respondent Nos.1 and 2 should be directed to furnish the details as requested by respondent No.6, to respondent No.6, so that further investigation can be made. Even if we consider the affidavit on behalf of respondent No.1 i.e. by Dr. Dipti Yadav, Deputy Director at Unique Identification Authority of India (UIDAI), Regional Office, Mumbai, it can be seen that the Aadhaar Card which is having unique identity by issuing 12 digit unique identification number, can be used as a proof of address. Respondent No.1 had received letter from respondent No.6 dated 9th June 2021 wherein Aadhaar Number of respondent No.7 was shared and there was a request to disclose information of the documents. Since as per Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (For short "the Aadhaar Act"), the information can be shared only for certain purposes. Further, as per the decision in *Justice K.S. Puttaswamy (Retd.) and others vs. Union of India and others, (Writ Petition No.494 of 2012, dated 26th September 2018*, the Hon'ble Supreme Court has clarified that an individual whose information is sought to be

released, shall be afforded an opportunity of hearing and in case an order of disclosure of information is passed without affording an opportunity of hearing, the concerned Aadhaar number holder shall have the right to challenge the said action. Therefore, respondent No.7 is required to be heard, who came to be added as party and further action deserves to be taken.

6. Learned Standing Counsel for respondent Nos.1 and 2 submitted that in view of the order passed by this Court on 7th December 2023 (**CORAM: R.G. AVACHAT AND SANJAY S. DESHMUKH, JJ.**), respondent No.1 was directed to place the documents submitted by Smt. Manisha Kabra @ Manisha Mantri for obtaining Aadhaar Card, under sealed cover, which were produced before the Court on 11th January 2024. Learned Standing Counsel has pointed out the provisions of the Aadhaar Act and submits that unless it is directed by this Court, the information cannot be shared.

7. Learned APP representing the State, submits that unless there is prima facie material, the FIR cannot be lodged on the basis of complaint dated 27th June 2018. The documents were

called or information regarding the same was called by respondent No.6 but it was not supplied.

8. Learned Senior Counsel Mr. Katneshwarkar instructed by Advocate Mr. Rahil Kazi for respondent No.7 submits that though after the objection was taken or said complaint was filed, the Aadhaar Card was suspended but it is now restored. He relies on the affidavit of respondent No.7, who has again given the history and then submits that in view of *Sakiri Vasu vs. State of U.P. and others, [(2008) 2 SCC 409]*, this Court cannot direct registration of the FIR. The petitioners have the alternative efficacious remedy to approach the Magistrate under Section 156(3) of the Code of Criminal Procedure. It is then submitted that respondent No.7 has secured Aadhaar Card on the documents of his father and no fraud is played by him by submitting forged documents. Respondent No.7 has produced copy of the electricity bill and passport of his father, of which photocopy is produced along with the affidavit.

9. At the outset, we would like to say that when the petitioners had received the Aadhaar Card and PAN Card on the address of the property which they say that, it is in their

possession, they were of the opinion that those documents have been procured / obtained by submitting false documents. Certainly petitioner No.1, who filed the said complaint with respondent No.6 on 27th June 2018, had no knowledge as to which documents were produced along with the form for obtaining Aadhaar Card and PAN Card. It is not only these two documents, but in the said complaint it is alleged that opponent No.1 Ms. Neha has also tried to obtain Debit Card by opening an account with ICICI Bank by giving the address of the said property, which is the subject matter of the civil suit. Of course, it appears from the documents that the mother of respondent No.7 has filed civil suit challenging the gift deeds and it also appears that the subsequent sale deed is also challenged. But from the affidavit-in-reply of respondent No.7 it is certain that no order is passed in favour of either he himself or in favour of his mother and sister. Respondent No.1 and 2 are harping upon Section 33 of the Aadhaar Act, especially Section 33(1), which came to be amended in 2019, which states that, any disclosure of information (other than core biometric information), including identity information or authentication records can be made pursuant to an order of a court not inferior to that of a Judge of High Court and opportunity of hearing be provided to both UIDAI

and the concerned Aadhaar Number holder. Now, both of them are before this Court and we have heard both of them. In ***State of Maharashtra vs. Unique Identification Authority of India and others (Criminal Writ Petition No.3002 of 2022) decided by the Coordinate Bench at the Principal Seat on 28th July 2023***, since the question of date of birth was involved, this Court observed that the Aadhaar Card is not a proof of date of birth of a person. However, in the same decision Office Memorandum dated 20th December 2018 issued by the Government of India, Ministry of Electronics and Information Technology Unique Identification Authority of India has been referred. Paragraph No.6(3) of the said Memorandum states that, the Aadhaar which includes Aadhaar Card etc. may be used as a proof of identity / proof of address along with other acceptable documents. What is carved out is that, it cannot be used as a proof of date of birth.

10. Dr. Dipti Yadav, Deputy Director of UIDAI, in her affidavit, has stated that the primary objective of the Aadhaar Act is to ensure targeted delivery of various subsidies, benefits, services, which are funded from the consolidated fund of India or the consolidated fund of State, to individuals residing in India through assigning of unique identity numbers to such individuals

by empowering residents of India with a unique identity by issuing a 12-digit unique identification number to such individuals. Therefore, we can say that the said Card can be used as proof of residence and then the Aadhaar Act itself states that which documents should be considered by the authority while issuing Aadhaar card.

11. What we can get from another affidavit on behalf be respondent No.1 by Dr. Amar M. Bhadange, the Deputy Director of UIDAI, Mumbai that the Aadhaar Card was issued to respondent No.7 on the basis of school bonafide certificate dated 25th February 2017, which is not a document on the basis of which Aadhaar Card can be issued. Now, as per the affidavit of respondent No.7, he says that he had used the electricity bill in the name of his father and the passport of his father, as a document of proof of address. In fact his father expired on 6th November 2005 and even the passport shows the date of expiry as 19th May 2012. The electricity bill is of the year 2013.

12. We are not making any comment as regards the merits, as to whether respondent No.7 was justified in attaching those documents and whether respondent Nos. 1 and 2 were justified

in issuing Cards to respondent No.7. We are only considering the prima facie case, whether there is a need to issue directions to respondent Nos.1 and 2 to furnish details as requested by respondent No.6 and therefore, those prima facie facts have been considered. Certainly, case is made out to issue those directions, so that respondent No.6 can complete the inquiry which is pending since 27th June 2018.

13. As regards prayer clause (C) is concerned, certainly in view of *Sakiri Vasu vs. State of U.P. and others* (supra), which is then followed in *Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and Others*, [(2016) 6 SCC 277] and in *M. Subramaniam and Others vs. S. Janaki and Others*, [(2020) 16 SCC 728], no directions can be given to register the FIR. Respondent No.6 would take the decision on the basis of the further inquiry.

14. Even as regards prayer clause (D), no directions can be issued to respondent No.6 in view of the fact that the civil suit is already pending.

15. In view of all the provisions and aforesaid discussion, we proceed to pass following order:-

ORDER

(I) Writ Petition stands partly allowed.

(II) We direct respondent Nos.1 and 2 to furnish the details in respect of Aadhaar Card issued to respondent No.7 (other than core biometric information) in pursuant to Section 33(1) of Aadhaar Act, 2016 as amended by the Aadhaar and Other Laws (Amendment) Act, 2019 (No.14 of 2019), within a period of three weeks, to respondent No.6.

(III) After the information is received, respondent No.6 to proceed with the further stages of complaint dated 27th June 2018.

(IV) Sealed packet delivered to this Court, be returned to learned Standing Counsel for respondent Nos.1 and 2 in sealed condition.

(V) Rule is made absolute in above terms.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE