



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4642 OF 2024

Govind S/o Narayan Pawar,
Age : 35 Years, Occu. : Agril,
R/o Hanmantwadi, Tq. Kandhar,
Dist. Nanded.

.. Applicant

Versus

1. The state of Maharashtra,
Through Police Station Officer
Malakoli Police station,
Tq. Kandhar, Dist. Nanded

2. Madhukar S/o Vishwabhar Pawar,
Age : 32 Years, Occu. : Agril.,
R/o Hanmantwadi, Tq. Kandhar,
Dist. Nanded.

.. Respondents

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Mr. A. N. Patale, Advocate for applicant.
Mr. G. A. Kulkarni, APP for the respondent No.1/State.

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**CORAM : SMT. VIBHA KANKANWADI &
R. W. JOSHI, JJ.**

DATE : 29 NOVEMBER 2024

ORDER :

. Present application has been filed for quashing the FIR vide Crime No.106 of 2024 registered with Malakoli Police Station, Taluka Kandhar, District Nanded and the proceedings bearing Charge-sheet No.44 of 2024 pending before the learned Judicial Magistrate First Class, Kandhar for the offences punishable

under Sections 447, 323, 504, 506 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate for the applicant. The main submission on behalf of the applicant is that the applicant was not present at the time of alleged incident and he was making *Kirtan* at a different place, which he would support with the help of statement, which he has got from Sarpanch of the said village. The second point he would raise is that no specific act is attributed against him and he has been unnecessarily roped. The third point he wants to insist is that the civil dispute is going on between his family and the informant and the proceedings which were taken on the basis of Mamlatdar Courts Act is now before this Court in a writ petition. The last point which he would submit is that he has been unnecessarily roped and harassed by the police.

3. The first and the foremost fact to be noted is that the burden of proof to prove the *plea of alibi* is always on the accused and he will have to prove it at the time of trial. As regards the proceedings under Section 482 of the Code of Criminal Procedure is concerned, when such *plea of alibi* is taken, this Court has

limitations and this Court can accept only the undisputed and authentic document which may be in the form of a public document and therefore, *plea of alibi* now tried to be taken by the applicant, cannot be considered.

4. In respect of point regarding civil dispute, though it might be pending before this Court, yet as regards the FIR is concerned, it is stated that the informant is the owner of agricultural land bearing Gut No.54/2 and when he was doing agricultural operation around 1.00 p.m. on 12.05.2024, all the accused persons including the present applicant went there, abused him, manhandled him and drove him out of the land stating that the said land belongs to them, thereby it is stated that the present accused persons have encroached upon his land. This incident is supported by *prima facie* evidence in the form of statements of witnesses. Witnesses Hanmant Ganjre as well as witness Tukaram Ganjre are adjoining landholders. They have also stated about the presence of the present applicant and have stated that the incident has been witnessed by them. Overt act may not be then attributed, but when it is stated that all of them have done a particular act, then that act is attributable to the applicant as well. The point of delay in lodging the FIR has also been tried to

be taken when it is stated that the incident has taken place at 1.00 p.m. on 12.05.2024 but the FIR has been lodged on 13.05.2024 around 14.03 hours. In this connection, we observe that the delay is not always fatal, but it can be explained and that cannot be the sole ground for quashing the FIR. Therefore, we do not find that even *prima facie* case is made out for issuing notice to respondent No.2, though learned APP is waiving notice for respondent No.1. Case is not made out for quashing the FIR. Hence, the application stands dismissed at the threshold.

[R. W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm