

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

CRIMINAL WRIT PETITION NO. 1029 OF 2017

Mr. Vishal Tandel
Aged about 41 years,
Presently residing at 117/8,
Jain Street, Nani Daman 396 210

.... Petitioner

v/s.

- 1) Union of India,
Through its Mumbai Office,
At Aaykar Bhavan, New Marine Lines,
Mumbai – 400 020.
Representing Ministry of Home Affairs,
Government of India.
- 2) The Administrator,
Union Territory of Daman,
Daman.
- 3) The Inspector General of Police,
Daman and Diu, having office at Daman.
- 4) The Superintendent of Police,
Daman, having office at Daman.
- 5) The Chief of Police, Daman,
having office at Daman
- 6) The SHO, Coastal Police Station,
Having office at Daman.
- 7) The SHO, Nani Daman Police Station,
Having office at Daman,
- 8) State of Gujarat,
Through its Principal Secretary,
Home Department,
Having office at Sachivalaya,
Gandhinagar, Gujarat.

- 9) Sharthak Kumar Maheshbhai Soni
- 10) Rajendra Gulshan
- 11) Chetanbhai Harishbhai
- 12) Manojbhai Kanubhai
Respondent Nos.9 to 12 are Police Officers,
Presently attached to R.R. Cell,
Office of the I.G. Surat Range,
Surat, State of Gujarat. Respondents

Mr. Bhavesh Parmar a/w. Ms. Reshma Nair i/b. Adv. Devmani Shukla
for the Petitioner.

Mr. Dashrath A. Dubey a/w. Mr. Rupesh Dubey for Respondent No.1.

Mr. Subodh Desai, Special PP for Respondent Nos.2 to 7.

Mr. Shreekant Gavand, APP for the State.

**CORAM: A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 10th APRIL, 2024.
PRONOUNCED ON : 22nd APRIL, 2024.**

JUDGMENT : (PER : SHYAM C. CHANDAK, J.) :-

- 1) Present Petition filed under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code, is seeking to quash the FIR No.11/2017 dated 15th February, 2017 registered with Coastal Police Station, Moti Daman against the Petitioner for alleged offences punishable under Sections 143, 147, 186, 224 and 225 of the Indian Penal Code and for other consequential reliefs.
- 2) Heard Mr. Bhavesh Parmar, learned counsel for the Petitioner, Mr. Dashrath Dubey, learned counsel for Respondent No.1, Mr. Subodh

Desai, learned Special PP for Respondent Nos.2 to 7 and Mr. Shreekant Gavand, learned APP for the State. Perused entire record.

3) Record indicates that, by Order dated 11th September 2017, as an ad-interim relief, it was directed that, “the police may carry out investigation, but charge sheet not to be filed, if not already filed, until further orders of this Court”. As noted in the Order dated 27th January 2020, Mr. Venegaonkar appeared for Respondent Nos.8 to 12, however, vakalatnama is not filed. Thereafter, despite service of notice, none appeared for Respondent Nos.8 to 12.

4) The facts giving rise to this Petition are as under :-

4.1) That, on 15th February, 2017 P.S.I. Mr. Sarthak Kumar Soni (*Respondent No.9 – for short ‘the informant’*), Rapid Response Cell, Office of Police Superintendent, Surat Division, Surat filed the impugned FIR wherein he narrated that, it is one of his duties to arrest wanted accused in criminal offences registered in the Districts under Surat Division. On 13th February, 2017 while on field duty, the Informant received a secret information that, Mr. Pramodbhai Rameshbhai Tandel, wanted accused in several prohibition crimes (*for short ‘Pramod Tandel’*), was present at Tennis Complex, Sports Complex, Moti Daman and he would leave from there immediately. Therefore, the Informant and his team members directly went there at about 07:55 hours. Said Pramod Tandel was standing there. Immediately, the Informant and his team cordoned Pramod Tandel, gave

him their introduction and explained that, he is wanted in several crimes. Then, the Informant took Pramod Tandel in his charge. Police constable – Mr. Chetanbhai handcuffed Pramod Tandel and made him to sit in the vehicle. However, Pramod Tandel started shouting loudly as *“police is arresting me so anyone please come and free me”*. Immediately, 08 to 10 men from Tennis Club came there. Five of them including the Petitioner surrounded the informant and his team and questioned them. In turn, the informant and his team members’ gave their introduction. At this juncture, the Petitioner said the informant that, *“you, Gujarat Police come at any time and arrest our men from Daman?. This will not be tolerated at all and if you are police then show your I-card”*. Then as demanded, the informant showed his identity card to the Petitioner. However, the Petitioner used provocative words, came close to the informant and tried to free Pramod Tandel. However, the informant did not release Pramod Tandel. Meanwhile, other 05 unidentified associates of the Petitioner involved in the act of using provocative words, forcibly pulled Pramod Tandel with Government handcuffs from the legal custody of the informant and took him to the Tennis Club. Therefore, the informant and his team tried to go there to get Pramod Tandel back in custody. However, the Petitioner came from the front and did not allow the police to go inside Tennis Club and thus intentionally obstructed in carrying out the legal duties by the said police officer.

4.2) As a result, said FIR No.11/2017 dated 15th February, 2017 came to be lodged at Coastal Police Station, Moti Daman against the Petitioner and others for offences punishable under Sections 143, 147, 186, 224 and 225 of the Indian Penal Code.

5) Mr. Parmar, learned counsel for the Petitioner submitted that, the informant and his team members had arrested Pramod Tandel in stark violation of the Guidelines laid down by the Hon'ble Supreme Court in the cases of *Shri. D.K. Basu v/s. State of West Bengal* with *Ashok K. Johri v/s. State of U.P.* reported in *AIR 1997 SC 610* and *Arnesh Kumar v/s. State of Bihar and anr.* reported in *AIR 2014 SC 2756*. Therefore, Pramod Tandel shouted for help and considering his illegal arrest, the Petitioner went there to help him. In such cases, the Petitioner is not expected to ascertain whether the cry for help is true or false. Thus, it is apparent that, the act of the Petitioner to help Pramod Tandel cannot be an offence as alleged in the FIR. Therefore, the Petitioner is innocent. However, the police registered the impugned FIR against the Petitioner and others, which is certainly for oblique reasons. Therefore, the said FIR is illegal and liable to be quashed and set-aside.

6) In contrast, learned Special PP vehemently submitted that, looking at the text of the FIR, it is apparent that, the Petitioner and his associates formed an unlawful assembly and forcibly removed Pramod Tandel from the charge of the informant and his team and illegally

obstructed them from apprehending Pramod Tandel again which was their lawful duty. As such, there is prima facie case of the alleged offence against the Petitioner. Therefore, the Petition may be dismissed.

7) The impugned FIR clearly shows that, when the Petitioner went to the spot pursuant to the call for help by Pramod Tandel, the latter was already handcuffed by the police. Thereafter, when the Petitioner questioned, the informant showed him his identity card. However, the Petitioner used provocative language and coming close to the informant, tried to free Pramod Tandel from the custody of police officer. At this juncture, the associates of the Petitioner got attracted by his provocative words and act of helping to free Pramod Tandel from police custody. Then, the Petitioner and his associates pulled Pramod Tandel in handcuffed condition from the custody of the informant and took him to Tennis Club. Till this time, the Petitioner did not take any exception to his associates. Thereafter, when the informant wanted to get Pramod Tandel back in his charge, the Petitioner posed himself as an obstruction by coming in front of the informant and not allowing him to go inside the Tennis Club. Thus, it is evident that, the ultimate object of the Petitioner and his associates was to obstruct the informant and his team members in discharging their lawful duties, which they were required to urgently perform by arresting Pramod Tandel, being a wanted accused in several crimes.

8) No doubt, when police is required to arrest an accused, the

Guidelines laid down in the case of *Shri. D.K. Basu* and *Arnesh Kumar* (supra) should have been followed. However, the non-compliance of these Guidelines is not alleged by Pramod Tandel and, the Petitioner an accused in present crime is espousing the cause of Pramod Tandel.

9) In view of the above discussion, there is nothing wrong or illegal in registration of the impugned FIR against the Petitioner. Perusal of material on record *prima facie* indicates that, in fact there is a strong *prima facie* case against the Petitioner and others of having committed the alleged offence. Therefore, question of quashing the impugned FIR does not arise here. The prayer for compensation is a disputed question of facts. The rest of prayers are for consequential reliefs. According to us, there are no merits in the Petition and is liable to be dismissed.

10) Petition is accordingly dismissed.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

11) At this stage, learned Advocate for the Petitioner submitted that, the interim relief granted by Order dated 11th September, 2017 may be extended for a period of four weeks from today.

11.1) Mr. Desai, learned Advocate for Respondent Nos.2 to 7 opposed the said relief.

11.2) For the reasons stated in the judgment and taking into consideration the fact that, the investigation of the present crime is stalled

since September, 2017 and the fact that, the Petitioner is alleged to have committed an offence of obstructing the public servant from performing his lawful duties, we are not inclined to extend the said interim relief. The said prayer is rejected.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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