



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

CRIMINAL APPLICATION NO.24 OF 2025

Mohammad Mohsin Shaikh Chand,
Age-32 years, Occu:Labour,
R/o-House No.100, Kandari Plot,
Kandari, Tq-Bhusawal, Dist-Jalgaon.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Bhusawal Market Police Station,
Tq-Bhusawal, Dist-Jalgaon,
- 2) Pandurang Dayaram Sonawane,
Age-68 years, Occu:At present Nil,
R/o-Durga Nagar, Pachora,
Tq-Pachora, Dist-Jalgaon.

...RESPONDENTS

...
Mr. Mohit R. Malpani Advocate for Applicant.
Mr. V.K. Kotecha, A.P.P. for Respondent No.1 – State.

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**CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**

DATE : 29th JANUARY, 2025

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

1. Present Application has been filed under Section 528 of the
Bharatiya Nagarik Suraksha Sanhita for quashing the

proceedings in R.C.C. No. 595 of 2011 pending before the learned Judicial Magistrate First Class, Bhusawal, District-Jalgaon in connection with Crime No.46 of 2011 registered on 24th March 2011 with Bazar Peth Police Station, Bhusawal, District-Jalgaon for the offence punishable under Sections 143, 147, 148, 353, 332, 309 of the Indian Penal Code and 37(1), (3), read with Section 135 of the Bombay Police Act.

2. Heard learned Advocate Mr. Malpani for the applicant and learned APP Mr. Kotecha for respondent No.1 - State.

3. It will not be out of place to mention here that when the matter was on Board on 13th January 2025, since the prayer is for quashing the FIR and the charge-sheet which is of the year 2011, we thought it fit that we should get a report from the learned Judicial Magistrate First Class (for short "the J.M.F.C."), Bhusawal before whom R.C.C. No. 595 of 2011 is pending, along with the explanation as to why he has not committed the case to the Court of Sessions up-till now, in view of the fact that there is Section 353 of the Indian Penal Code involved in this case. We have received the report stating that there are in all 24 accused persons who have been arrayed in the matter. Summons were

issued after filing of the charge-sheet, however only few accused are regularly appearing and others are not at all appearing. Lastly non-bailable warrant has been issued against all the accused including accused No.23 i.e. present applicant. Even the present applicant i.e. original accused No.23 had appeared in the matter, for the first time, on 3rd October 2015 though the charge-sheet was filed in 2011 itself. On 30th November 2023, a non-bailable warrant has been got cancelled by accused No.23 and then he is appearing in the Court regularly. Due to the absence of the accused the proceeding is disrupted as presence of all the accused has not been secured, except accused No.20, who has expired in the meantime. The case has not been committed to the Court of Sessions.

4. Learned Advocate appearing for the applicant, original accused No.23, has tried to project that applicant is appearing before the concerned Court regularly, yet the matter has not been taken up and therefore, it is affecting his right of speedy trial. The grounds those have been stated in the Application are not clarifying the facts that once the non-bailable warrant has been issued against the applicant and he had appeared for the first time in 2015 in the matter. Even if we take that the present

applicant is appearing in the matter since 2023, yet, he cannot say that his right to speedy trial is affected. Though he had the knowledge that the offence is pending since 2011, he has approached this Court only in 2025. For separation of his trial also, there is a procedure prescribed which has to be gone into.

5. It was argued that the applicant had no concern in the matter as he was on duty as night watchman but he has been falsely involved. It is to be noted that the FIR has been lodged by the Chief Officer of Pachora Municipal Council, who was also in-charge as Chief Officer of Bhusawal Municipal Council. It appears that a drive was taken for removal of illegal structures in Bhusawal and the present applicant and other accused persons had resisted the said squad. In the FIR, the informant has given all the details that notices were given and then those notices were challenged in the civil suit, which came to be dismissed. Even the appeal came to be dismissed. When the illegal structure has been erected, then legal proceedings cannot be avoided by anybody. But when the informant and the entire squad has gone to the said place, the applicant and other accused persons resisted the entire squad from carrying out demolition work. Stones were pelted on the squad, resulting in

injury and also abuses were given. Original accused No.1 had brought kerosene bottle and she tried to commit suicide by ablazing with the help of the cotton from pillow and the said kerosene. Under these allegations, when the offence has been registered, there is every seriousness in the allegations. Now presence of the other accused persons is not secured and therefore, as per the learned J.M.F.C., the case has not been committed to the Court of Sessions. We would like to advise the learned J.M.F.C. that the case is required to be committed and not the accused and therefore, there should not be any delay in committing the case to the Court of Sessions. Learned Magistrate may take immediate steps in this respect. However, at the same time, she is not supposed to give a go-bye to the reasonable procedure.

6. There is evidence on record wherein it is stated that the present applicant was present at the spot and he was part of the unlawful assembly. Certainly, it is stated that he was the security guard, but the applicant has also not stated, as to who was his employer. If the employer's property was within the structure which was declared as illegal, then possibility cannot be ruled out that the applicant was supporting his employer. Therefore,

certainly, this is not a fit case where we can exercise our inherent powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita for quashing the FIR and the proceedings. However, at the cost of repetition we would say that the learned J.M.F.C. may expedite the stage of committing the case to the Court of Sessions.

7. The Application stands rejected.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/FEB25