



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

CRIMINAL APPLICATION NO.1522 OF 2023

Shivraj Damodhar Shinde,
Age-25 years, Occu:Student,
R/o-Plot No.7/8, Mahajan Colony,
N-2, Cidco, Aurangabad.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Investigating Officer,
Crime No.0067/2023,
Mukundwadi Police Station,
Aurangabad,
- 2) Shivaji Navnath Kawale,
Age-25 years, Occu:Education,
R/o-Flat No.6, Shubhadra Apartment,
Ulkanagari, Aurangabad.

...RESPONDENTS

...
Mr. Sandeep B. Rajebhosale Advocate for Applicant.
Mr. A.R. Kale, Additional P.P. for Respondent No.1 -State.
Mr. Jay Raundale Advocate h/f. Mr. Ishwar K. Wagh Advocate
for Respondent No.2.

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

DATE OF RESERVING ORDER : 18th JUNE 2025

DATE OF PRONOUNCING ORDER : 23rd JULY 2025

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

1. Present Application has been filed, initially for quashing the First Information Report (for short "the FIR") vide Crime No. 67 of 2023 registered with Mukundwadi Police Station, Aurangabad on 16th February 2023, for the offence punishable under Sections 307, 504 read with Section 34 of the Indian Penal Code, and later on, by way of amendment for quashing the proceedings in R.C.C. No.1400 of 2023, pending before the learned Judicial Magistrate First Class, Aurangabad.

2. Heard learned Advocate Mr. Rajebhosale appearing for the applicant, learned Additional P.P. Mr. Kale appearing for State and learned Advocate Mr. Raundale holding for learned Advocate Mr. Wagh for respondent No.2.

3. Learned Advocate appearing for the applicant has taken us through the entire charge-sheet and then submits that it appears that earlier incident had taken place somewhere in Connaught Place, Aurangabad around 9.30 p.m. of 15th February 2023, wherein it is stated that there was some trifle dispute between the present applicant, his friends and some boys from Harsool village. Thereafter all of them went their own way. The informant

says that thereafter he went to meet present applicant near the water tank in N-2 area after half an hour, where the applicant and his friends were practicing beating of drums. Informant says that he asked the applicant, as to on which ground there was dispute at Connaught Place. At that time one Santosh Sonawane, who was present there, assaulted the informant with iron rod on his head on left side and one Shubham Dehade had assaulted the informant on his head with some weapon from back side. Present applicant and others had assaulted him by kicks and fists and abused him. The informant's friend Amol Jadhav @ Dhamma took him to Sahyadri Hospital, Ramnagar on his motorcycle, where M.R.I. was taken and thereafter he was admitted to Orion City Care Hospital. Important point to be noted is that the informant has filed an affidavit to the Anticipatory Bail Application No. 492 of 2023 filed by accused Santosh Sonawane. In the said affidavit it has been stated that due to misconception and inadvertence he has taken the name of Santosh Sonawane and he has no objection for grant of pre-arrest bail to Santosh Sonawane. That means, the entire story itself is concocted. There was no enmity between the applicant and respondent No.2. Most of the witnesses are hear-say witnesses, except Amol @ Dhamma Shivaji Jadhav. But if we consider his statement

carefully, it can be seen that witness Amol went to the spot after the alleged incident. He was proceeding towards his house around 22.20 hours when he found a person lying on the road, he stopped his motorcycle and went near the injured. Amol recognized him as informant, respondent No.2 and upon inquiry the informant had given him the story. That means, he is not an eye witness as he is tried to be projected in the FIR. Except the contents of the FIR, there is nothing on record and therefore, it would be unjust to ask the applicant to face the trial.

4. Per contra, the learned APP as well as learned Advocate for respondent No.2 vehemently objected the application and submitted that the FIR for the offence under Section 160 of the Indian Penal Code came to be lodged vide Crime No.88 of 2023 with Cidco Police Station, Aurangabad on the basis of FIR Lodged by the Police Station Officer Vishal Sanjay Khute. He along with other police persons were on patrolling duty. Around 21.30 hours on 15th February 2023, they received a phone call that some persons were committing affray near Raigad Shop House in Connaught Place, N-5 area. Present applicant has been named as Shiva Kale. So, certainly an incident at Connaught Place had taken place. Informant has also stated that he alone had gone to meet the applicant after half an hour of the earlier dispute. The

medical record i.e. MLC that was given by Orion City Care Super Speciality Hospital, would also show that the informant had gone for settling the dispute in which he received injuries. There are photographs of the injuries sustained by the informant. The injuries sustained are- (i) CLW over Occipital and parietal region, (ii) minimal subgaleal hematoma in right temporal region. Therefore, when the informant has sustained the injuries and the investigation is over, it will not be a fit case where the inherent powers should be exercised.

5. At the outset, we would like to say that merely because there is no eye witness to the incident, we cannot throw a case if prima facie offence is made out. The contents of the FIR are already narrated and therefore, we do not want to reproduce the same. The informant has given his reason as to why he went after half an hour of the earlier incident, to meet the applicant. In the earlier incident the informant had not sustained any injury nor the dispute was with him. It appears that when the informant asked the applicant, what was the reason behind the dispute between his group and the other group, he was attacked.

6. Now, as regards the assailant Santosh Sonawane, the

informant might have compromised the matter and thereupon he has stated that he had taken name of Santosh Sonawane inadvertently, but that cannot be the ground to brand the FIR as false or lodged with *mala fide* intention. The informant has sustained injuries and in respect of the earlier dispute, on the basis of the FIR lodged by the police, offence under Section 160 of the Indian Penal Code has been lodged. Witness Amol is the person who reached the spot immediately and at that place itself the informant had given the history of assault, though other witnesses who are the relatives of the informant appear to be hear-say witnesses. Therefore, we do not find this to be a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure.

7. The Application stands dismissed.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JULY25