



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.832 OF 2025

Bhishmraj S/o Sopan Rothe,
Age-33 years, Occu:Agri.,
R/o-Tilapur, Taluka-Rahuri,
District-Ahmednagar.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Chief Secretary,
Home Department, Mantralaya,
Mumbai-32,
- 2) The Superintendent of Police,
Ahmednagar,
- 3) The Investigation Officer,
Rahuri Police Station,
Rahuri, District-Ahmednagar.

...RESPONDENTS

...
Mr. Ajit B. Chormal Advocate for Petitioner.
Mr. P.S Patil, Additional P.P. for Respondents.
...

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

DATE : 24th JULY 2025

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

1. Heard learned Advocate for the petitioner. Present Petition

has been filed for following reliefs:-

"B] This Hon'ble Court, by issuing appropriate writ or order or direction in the like nature, may kindly directed to respondent No.1 and 2, handover the investigation in Crime bearing No.05017 of 2025 registered with Rahuri Police Station, Tq-Rahuri, District-Ahmednagar, to some other officer of high rank.

C] To direct respondent No.2 to decide the representation dated 02/05/2025 filed by the petitioner by issuing appropriate writ or order or directions in the nature of writ.

D] To direct the respondent authorities to add additional Section 109 of the BNS Act in First Information Report Bearing No.0507 of 2025 registered in Rahuri Police Station, Tq-Rahuri, District-Ahmednagar."

2. Learned Advocate for the petitioner submits that the facts of the case disclose that the offence under Section 109 of the Bharatiya Nyaya Sanhita has been made out and still the investigating officer is not adding the said section. Here it is to be noted that the offence has been registered for the offence punishable under Sections 352, 351(2), 324(4), 191(3), 191(1), 190, 189(4), 189(2), 189(1), 118(2), 118(1) of the Bharatiya Nyaya Sanhita, and Section 4 punishable under Section 25 of the Indian Arms Act.

3. Taking into consideration the submissions, it can be seen that the investigation is still going on. The section can be added at any point of time if the facts would get revealed during the investigation. Even if we take that the said section is not added by the police at the time of charge-sheet, yet it can be pointed out to the concerned Magistrate who takes the cognizance of the offence, that the facts of the case disclose the ingredients of Section 109 of the Bharatiya Nyaya Sanhita. So that is the stage available first in point of time. Thereafter the next stage where that opportunity would be available is when the process will be issued by the Magistrate. The third stage where addition of section can be made, would be the stage if it is found by the Magistrate that the case deserves to be committed to the Court of Session in view of the fact that any offence which is triable by the Court of Session is made out and then by following procedure, case can be committed to the Court of Session. Next opportunity would be available at the time of framing of the charge and lastly it would be available even under Section 362 of the Bhartiya Nyaya Suraksha Sanhita, (Old Section 323 of the Code of Criminal Procedure), which prescribes for procedure, when a Magistrate, during an inquiry or trial, finds that the case

should be committed to the Court of Session. Thus, when as per law, the addition of section can be made at so many stages, then in that case only for the addition of said section, investigation cannot be handed over to any higher rank officer.

4. We do not find any merit in the present matter requiring the constitutional powers of this Court to be invoked and therefore, the Writ Petition stands dismissed at the threshold.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JULY25