



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

32 CRIMINAL WRIT PETITION NO.1055 OF 2023

Shaikh Imran Shaikh Nizam,
Age 34 yrs., Occ. Education,
R/o Jijamata Chowk, Masrat Nagar,
Beed, Tq. & Dist. Beed.
At present r/o Noble Heights,
Near Renuka Mata Kaman,
Satara Parisar, Aurangabad.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through Police Inspector,
Police Station, Satara,
Tq. & Dist. Aurangabad.
- 2 Jalindar Bhikraj Talole,
Age 45 yrs., Occ.
R/o Laxmi Hospital, Bazartal,
Behind Police Station, Gangapur,
Tq. Gangapur, Dist. Aurangabad.
- 3 Kalyan M. Chabukswar,
Age Major, Occ. PSI,
Police Station, Satara,
Tq. & Dist. Aurangabad.
- 4 Director General of Police,
State of Maharashtra,
DGP Office, Mumbai.
- 5 Commissioner of Police,
Commissioner of Police office,
Aurangabad.

... Respondents

...

Mr. T.Y. Sayyed, Advocate for petitioner

Mr. S.A. Gaikwad, APP for respondent Nos.1 and 3

Ms. Pooja Ingle, Advocate h/f Mr. S.J. Salunke, Advocate for respondent No.2

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

DATE : 05th AUGUST, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present writ petition has been filed for quashing First Information Report vide Crime No.201/2023 dated 23.06.2023 registered with Police Station, Satara, Tq. & Dist. Aurangabad, for the offence punishable under Section 395, 427, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. T.Y. Sayyed for petitioner, learned APP Mr. S.A. Gaikwad for respondent Nos.1 and 3 and learned Advocate Ms. Pooja Ingle holding for learned Advocate Mr. S.J. Salunke for respondent No.2.

3 Learned Advocate appearing for petitioner has taken us through First Information Report and submits that present petitioner has been arrayed as accused No.3. It has been stated that other two co-accused and present petitioner have committed encroachment on the plot of informant and has raised a beam horizontally and then it is stated that on 31.12.2022 the natural stream which was on the Western side of the informant's plot was dug and without taking his permission its direction has been changed and thereby encroachment has been committed on his plot. He had restored the stream of the streamlet with the help of Municipal authorities on 24.03.2023, but still present petitioner and co-accused had damaged the erected polls, and thereby caused damage to the extent of Rs.50,000/-. He then states that when he was constructing compound around his plot around 14.30 to 15.30 hours on 05.06.2023, petitioner and co-accused entered his plot unauthorizedly and with the help of crowbar assaulted informant and his brother-in-law Satish Balasaheb Lipani and forcibly took away concrete polls. Petitioner has a defence that he had physically appeared on 05.06.2023 for examination of Instructor in Industrial Training Institute at Director of Vocational Training, Government of Maharashtra. On that day there were four different papers from 9.00 a.m. The reporting time was 7.30 a.m. and examination was to come to an end around 5.45 p.m. The Answer Keys downloaded of said examination record with photo at the examination centre

with biometric attendance has been annexed. The petitioner has nothing to do with co-accused. He has no concern with the property dispute. Except that he resides on rental basis in said property. He has been unnecessarily involved in the matter. Further, it can be seen that the dispute is purely civil in nature, when it is alleged that there is encroachment. Unnecessarily criminal colour has been given. It would be an abuse of process of law if he is asked to face the trial, when ingredients of offence under Section 395 of the Indian Penal Code are not getting attracted.

4 Learned APP as well as learned Advocate appearing for respondent No.2 strongly opposed the petition and submit that the other incidences have been quoted in order to show the *mens rea* and main incident regarding the offence had taken place on 05.06.2023. The incident as narrated has been videographed and, therefore, there is electronic evidence about the same also. The investigation is still pending and charge sheet is not filed, therefore, let there be trial.

5 Learned Advocate appearing for petitioner submits that petitioner has filed additional affidavit. When it was then stated that there is videography of the incident, he had filed an application under Right to Information Act to the Commissioner of Police, Aurangabad seeking CCTV footage of Police Station, Satara. Police Station, Satara has provided the

information vide letter dated 14.10.2023 that there is discrepancy in time displayed in CCTV footage and CCTV footage of Police Station is not correct. It is one hour and 12 minutes ahead. Petitioner reiterates that the provisional merit list of Craft Instructor examination is declared on 06.10.2023 and name of petitioner is appeared in the said list. That examination was conducted between 2.30 p.m. to 3.15 p.m. on the alleged day of incident. This also supports the contention of petitioner and in fact the Investigating Officer ought to have exercised his powers under Section 169 of the Code of Criminal Procedure.

6 Here, interesting fact is that as against co-accused it appears that investigation has been completed and charge sheet has been filed for the offence punishable under Section 323, 143, 427, 504, 506 read with Section 34 of the Indian Penal Code with learned Judicial Magistrate First Class, Aurangabad. Copy of charge sheet dated 31.12.2023 has been produced. In the said charge sheet name of present petitioner is not appearing. Co-accused Shaikh Awais s/o Shaikh Mustakh, Muhammad Umar Khan Muhammad Yusuf, Pathan Mujahidkhan Wajitkhan, Abdul Azeem Mohammed Ismail had filed Criminal Application No.2884 of 2023 and 2776 of 2023 before this Court and after disinclination was shown to grant relief to them, they have withdrawn their applications today. Now, as regards present

petitioner is concerned, Investigating Officer appears to have not taken the decision. This Court cannot direct Investigating Officer that he should file closure report against a particular accused to take action under Section 169 of the Code of Criminal Procedure or to file charge sheet is exclusively within the prerogative of Investigating Officer. Till then this Court will have to go with present contents of First Information Report. Since the charge sheet is not filed against present petitioner, he has not carried out the amendment and may be justified in the same. As regards plea of *alibi* is concerned, that will have to be proved by petitioner. Therefore, by going on the plain reading of First Information Report there are allegations against present petitioner and his involvement is shown. When petitioner has given certain evidence regarding his presence at some other place, then in First Information Report it is stated that there is evidence in the nature of videography. Whether that videography was produced before Investigating Officer or Investigating Officer collected the same or not is not before this Court and charge sheet in fact shows that a pen-drive of videography from mobile of informant has been collected. However, the transcript appears to have not been given. There is certificate under Section 65-B (4) of the Indian Evidence Act, 1872 also. Therefore, it is now a disputed question of fact regarding presence of petitioner at the place of incident and, therefore, that cannot be gone into present writ petition. Therefore, we are not in favour of exercising our

powers under Article 226 of the Constitution of India. Writ Petition stands dismissed.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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