



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

CRIMINAL APPLICATION NO.2749 OF 2023

Mr. Vishnu @ Chiman S/o Yadavrao Nimalwad,
Age-32 years, Occupation:Service,
R/o-Barhali, Taluka-Mukhed, District-Nanded.

...APPLICANT

VERSUS

1) The State of Maharashtra,
Through Police Inspector,
Mukramabad Police Station,
Taluka-Mukhed, District-Nanded,

2) Pramodini W/o Nandkumar Gabale,
Age-53 years, Occupation:Service,
R/o-Walmik Nagar, Barhali,
Taluka-Mukhed, District-Nanded.

...RESPONDENTS

...
Mr. Vikas S. Bhale Advocate for Applicant.
Mr. P.S. Patil, Additional P.P. for Respondent No.1.
Mr. P.P. Uttarwar Advocate for Respondent No.2.
...

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

DATE : 8th JULY, 2025

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

1. Present Application has been filed for quashing the Charge-sheet No.77 of 2023 i.e. proceedings in Sessions Case No.38 of

2023, pending before the Assistant Sessions Judge, Kandhar, arising out of the First Information Report (for short "the FIR") vide Crime No.8 of 2023, registered with Mukramabad Police Station, District-Nanded, on 13th January 2023, for the offence punishable under Sections 395, 397, 120-B, 427 of the Indian Penal Code, Sections 3 and 4 punishable under Section 25 of the Indian Arms Act, Sections 130(1) and 50 punishable under Section 177 of the Motor Vehicles Act.

2. Heard learned Advocate Mr. Bhale appearing for the applicants, learned Additional P.P. Mr. Patil for respondent No.1 and learned Advocate Mr. Uttarwar for respondent No.2.

3. Learned Advocate appearing for the applicant has taken us through the entire charge-sheet including the FIR and submits that the FIR lodged by present respondent No.2 is against unknown persons. When some co-accused appears to have been arrested by the investigating officer, it is then stated that they made disclosure that the present applicant had told them that there is a huge amount and gold ornaments with the informant and therefore, they should come with some country-made pistol and the robbery to be made. Thereupon, with an intention to get the amount and the gold, they made preparation, procured

country-made pistol and the cartridges and after making planning they came to Barhali. They were introduced with applicant, who again explained them the design for dacoity, as by that time more than five persons came together for executing the plan and they had disclosed that as per the plan of the applicant they had committed dacoity. The said disclosure statement is not admissible as against the present applicant. From the present applicant nothing has been seized. He is from the same village of the informant and her husband and they have not stated that they had identified the present applicant. Except now the alleged call recording and the said disclosure statement, there is nothing against the present applicant and in such situation it will be unjust to ask him to face the trial.

4. Per contra, the learned Additional P.P. as well as learned Advocate for respondent No.2 strongly opposed the application and submitted that at this stage, there is evidence in the form of disclosure statement which had led to the discovery of gold articles. Those articles have been identified by the informant as belonging to her. According to the disclosure statement, the design of the robbery was of the present applicant and one Pawan @ Balu Naik. After dacoity, the articles were distributed to some extent only and rest of the articles appears to have

been kept by the applicant and accused Pawan @ Balu Naik. Though nothing has been recovered from the present applicant, yet there is further evidence in the form of call recordings and therefore, let there be a trial. The trial Court would decide as to what is admissible.

5. We agree with the submissions on behalf of the applicant for the simple reason that in the FIR it can be seen that the informant had stated that three persons entered her house by covering their faces with the handkerchiefs. Initially she had stated that one of the accused placed knife to her neck and another accused also placed knife to the neck of her husband and by assaulting her husband, they were asked to show the gold and silver ornaments as well as amount. They forcibly snatched the key from the informant and took away cash of Rs.1,60,000/- and gold ornaments worth Rs.1,89,000/-. Subsequently, in the supplementary statement, which has been recorded almost after twenty days, the informant has given more articles of gold and silver and had then stated that the articles worth Rs.10,29,800/- and cash of Rs.5,60,000/-, in all Rs.15,94,000/- were forcibly taken away. Again one more supplementary statement has been recorded on 10th February 2025 i.e. almost a month after the FIR, stating that her husband

was shown a pistol by one of the accused. At least, we are unable to get from the FIR, as to how the investigating officer had come to know about name of any of the accused persons initially and then he went on disclosing the names of the other persons. Except the mobile phone, nothing has been recovered from the search of the person of the present applicant. But as against the other accused persons are concerned, apart from their mobiles, certain articles have been seized. From the house of Pawan @ Balu Naik, car has been seized, from accused Balaji Naik gold articles, cash of Rs.4000/- and one knife has been recovered, from the house of accused Vishnukant Kundgir gold ornaments and cash has been seized and from the house of the applicant a motorcycle has been seized. The vehicles are stated to be used in the commission of the crime.

6. Now, except the statements of the co-accused regarding the involvement of the present applicant and the alleged call recordings, there is nothing. Even the details of bank accounts of certain accused have been collected but there appears to be no transaction between those accused and the present applicant. Statement of the co-accused is inadmissible in evidence and for that purpose trial need not be held. What is admissible and what is not admissible, can be considered even at this stage. It can be

considered even at the stage when the charge is framed, as the Courts are duty bound not to record that evidence which is inadmissible in evidence. Merely on the basis of the call recordings, it cannot be stated that the present applicant had the design or was the mastermind behind the entire episode. The investigating officer appears to have failed to collect the evidence which would have shown that the present applicant had also received his booty.

7. Under such circumstances, it would be unjust to ask the applicant to face the trial. The case is made out for exercise of powers under Section 482 of the Code of Criminal Procedure. Hence, the following order:-

ORDER

(I) The Application stands allowed.

(II) The Charge-sheet No.77 of 2023 i.e. the proceedings in Sessions Case No.38 of 2023, pending before the learned Assistant Sessions Judge, Kandhar, arising out of the First Information Report vide Crime No.8 of 2023, registered with Mukramabad Police Station, District-Nanded, on 13th January 2023, for the offence punishable

under Sections 395, 397, 120-B, 427 of the Indian Penal Code, Sections 3 and 4 punishable under Section 25 of the Indian Arms Act and Sections 130(1) and 50 punishable under Section 177 of the Motor Vehicles Act, stands quashed and set aside as against applicant - Mr. Vishnu @ Chiman S/o Yadavrao Nimalwad.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JULY25