



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

3 CRIMINAL APPLICATION NO. 3971 OF 2024

1. Mohammad Isa S/o Mohammad Yasin
Age- 44 Years, Occ- Business,
R/o- Flat no- 1, Arsalan Apartment,
Ahabab Colony, Katkat gate Road,
Aurangabad.
2. Matin S/o Hiraji Patel
Age- 35 Years, Occ- Business,
R/o- Galli No- 28, Indra Nagar,
Baijipura, Aurangabad
3. Shaikh Tayyab S/o Shaikh Noor
Age- 27 Years, Occ- Business,
R/o- H.No- 3-4-221, Near M.R.
Palace, Rahim nagar,
Jasvantpura, Aurangabad.
4. Satish S/o Asaram Gaikwad
Age- 40 Years, Occ- Business,
R/o- Galli No- 10, Sanjay Nagar,
Mukundwadi, Aurangabad.
5. Yogesh s/o Gulabrao Ban
Age 34 yrs. Occ. Business,
R/o- H.No.J-2I /8,
J sector, Cidco N-2, Mukundwadi,
Tq. Dist. Aurangabad.
6. Amit S/o Sudhakar Bhuigal
Age- 44 Years, Occ- Business,
R/o- H.No- 1-B-4-39, Kile Ark,
VIP road, Aurangabad.
7. Milind S/o Pundlik Borde
Age- 42, Occ- Business,
R/o-Plot no- 36, Ekta Nagar,
Jatwada Road, Harsool,
Aurangabad.
8. Mohammad Jaweed S/o
Mohammad Isaque

-2-

Age- 60 Years, Occ- Business,
R/o- Block no- 6, ST colony,
Aurangabad.

9. Pankaj S/o Baliram Bansode
Age- 42 Years, Occ- Business,
R/o- Plot no-10, Maske
Petrol Pump,
Satara Parisar, Aurangabad.
 10. Purushottam S/o Khushalrao Dabhale
Age- 59 Years, Occ- Business,
R/o- H.No. 5-15-70 P, Bhimnagar,
Bhawsingpura, Aurangabad.
 11. Aleem Khan Yaseen Khan
Age- 54 Years, Occ- Business,
R/o- H.No- 1-7-88 Begumpura,
Makbara Road, Tal- Dist. Aurangabad.
 12. Arundhati Vjay Shirsat
Age- 60 Years, Occ- Social Service,
R/o- Plot no- 11, Gokul Colony,
Jawahar Nagar, Akola, Maharashtra.
 13. Afsar Khan S/o Yasin Khan
Age 55 yrs. Occ. Business,
R/o- Begumpura, Bibika
Makbara Road
Tal- Dist. Aurangabad.
- ...Applicants

Versus

The State of Maharashtra ...Respondent

...

Advocate for Applicant : Mr. Rameez K. Pathan
APP for Respondent No.1: Mrs. P. R. Bharaswadkar

.....

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

DATED : 25th JULY, 2025

PER COURT :-

1. The present application has been filed for quashment of the

proceeding in S.C.C. No.13669 of 2024, pending before the learned Judicial Magistrate, First Class, Aurangabad, arising out of the F.I.R. vide C.R. No. 163 of 2024 registered with City Chowk Police station Aurangabad, for the offences punishable under Section 143 and 188 of I.P.C. and Section 135 of Maharashtra Police Act.

2. Learned advocate for the applicants, after taking us through the F.I.R., submits that the applicants are party workers of a political party and applicant No.13 was contesting the Loksabha election of 2024. Some news was circulated on social media against the party and therefore, he wanted to lodge the F.I.R. He was with applicant No.5. However, the informant who is a police constable attached to City Chowk police station, lodged the F.I.R. by saying that all the applicants alongwith other 40 to 50 supporters went to the police station. Then it is stated that it was pointed out to the applicants and others that the order has been promulgated by the Commissioner of Police, Chhatrapati Sambhajnagar on 27.04.2024 under section 37(1) and (3) of the Maharashtra Police Act, thereby prohibiting more than five persons for coming together. He states that inspite of bringing the said order to the notice of the applicants and others and requesting them that only the informant should remain there and other should go, still they refused to leave the police station and they were there for lodging the F.I.R. and under such circumstances, he

filed the F.I.R. The ingredients of offences are not transpiring and even the other documents in the charge sheet are not sufficient to attract the ingredients of the offences.

3. Learned A.P.P. objects the application and submits that ingredients get attracted when the applicants had refused to follow the order promulgated by the Commissioner of Police, Chhatrapati Sambhajinagar.

4. The important point to be noted is the copy of the order passed by the Commissioner of Police, Chhatrapati Sambhajinagar under Section 37(1) and (3) of the Maharashtra Police Act dated 27.4.2024 has been annexed, which was to be operative between 29.4.2024 to 13.5.2024. The incident is stated to have taken place on 12.5.2024 that means, it was within the said period of existence of order of promulgation by the Commissioner of Police.

5. It is then stated that the applicants alongwith around 40 to 50 supporters had gone to the police station, which is stated to be for lodging the F.I.R. However, even after the order dated 27.04.2024 was pointed out to them, still they remained in police station. As per Section 37 of the Maharashtra Police Act, which empowers the Commissioner and the District Magistrate to prohibit certain acts for

prevention of disorder states that carrying out of all activities mentioned can be prohibited for preservation of public peace or the public safety by a notification and such public safety therefore, as per our contention, can be acted by a public office also. Further, as regards offence under section 143 of the I.P.C. is concerned, the person has to be a member of unlawful assembly and for that purpose we will have to consider the definition of unlawful assembly given in section 141 of I.P.C. In all 5 acts have been covered for which design or the purpose of five or more persons would amount to unlawful assembly.

6. We are more concerned with the explanation to Section 141 of I.P.C. which states that “the assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.” Therefore, prima facie, we could see that after the order dated 27.4.2024 was brought to the notice of the applicants and the party workers that only the informant or the person who wants to lodge the F.I.R. should remain in the police station and others should go, still they remained there. That means, thereafter gathering of people or that assembly which was there for some purpose, became unlawful assembly. Therefore, according to us even prima facie, the offence under Section 143 of I.P.C. is getting attracted. The same is the case as regards Section 188 of the I.P.C. However, for section

188 of I.P.C. there has been hurdle of section 195 of Cr.P.C. Section 195(1) of Cr.P.C. states that no court shall take cognizance of any offences punishable under Sections 172 to 188 (both inclusive) of I.P.C. except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. However, when here section 188 given alongwith Section 143 of I.P.C. which is cognizable, then it would be for the concerned Court to consider as to whether charge/particulars of offence should be framed for the offence punishable under Section 188 of I.P.C. or not. Of course, this cannot be a ground for entertaining the application under Section 482 of Cr.P.C. The application stands rejected at the threshold.

(SANJAY A. DESHMUKH, J.) (SMT. VIBHA KANKANWADI, J.)

rlj/