



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3425 OF 2022

1. Mohammad Haji Rahimoddin
2. Mohammad Ali s/o Abdul Rahim (Gutkawala)
3. Mohammad Nazeeb s/o Abdul Rahimoddin
4. Mohammad Zafar s/o Sarfarajoddin
5. Minaz @ Gaysoddin s/o Sarfarajoddin
6. Sultanoddin @ Akbar s/o Sarfarajoddin
7. Shaikh Sikandar s/o Shaikh Zafar
8. Mujafaroddin @ Shamim s/o Zahiroadin
9. Gufaranoddin s/o Gaysoddin
10. Iteqharoddin @ Attque s/o Ahmoddin
11. Akhtar Quazi s/o Mubassir Quazi
12. Mohammad Jahangir s/o Iteqharoddin
13. Sana Mohmmadi s/o Mohd. Juneed
14. Miyajani s/o Babamiya
15. Shaikh Zafar s/o Shaikh Jafar
16. Shaikh Sarvar s/o Shaikh Rahim
17. Javed Jatar
18. Athar Faruqui s/o Khadar Faruqui
19. Ikramoddin s/o Sarfarajoddin
20. Mohammad Khaja s/o Abdul Rahim

.. Applicants

Versus

1. The State of Maharashtra
Through Police Station Rural
Nanded, District Nanded.
2. Mohommad Gaous Mahiyoddin Mohd.

.. Respondents

...

Mr. M. K. Bhosale, Advocate h/f Mr. A. G. Mohammed, Advocate for the applicant.

Mrs. P. R. Bharaswadkar, APP for respondent No.1/State.

Mr. Vishal Chavan, Advocate h/f Mr. D. R. Deshmukh, Advocate for respondent No.2.

...

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

DATE : 11 JULY 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present application has been filed under Section 482 of the Code of Criminal Procedure initially for quashing the FIR vide Crime No.560 of 2022 dated 16.09.2022 registered with Nanded Rural Police Station, District Nanded and later on, by way of amendment, for quashing the proceedings in Regular Criminal Case No.1365 of 2023 pending before the learned Judicial Magistrate First Class, Nanded for the offences punishable under Sections 307, 143, 147, 148, 149, 188, 120B, 506 of Indian Penal Code and under Sections 3, 4 punishable under Section 27 of the Indian Arms Act.

2. Heard learned Advocate Mr. M. K. Bhosale holding for learned Advocate Mr. A. G. Mohammed for the applicants, learned APP Mrs. P. R. Bharaswadkar for respondent No.1/State and learned Advocate Mr. Vishal Chavan holding for learned Advocate Mr. D. R. Deshmukh for respondent No.2.

3. Learned Advocate appearing for the applicants has stated that respondent No.2 had filed OMCA No.572 of 2021 before the learned Judicial Magistrate First Class, Nanded on 10.03.2021 seeking relief under Section 156(3) of the Code of Criminal Procedure and registration of the crime. The applicants state that they appeared in the matter on 24.05.2021 and filed their written notes of arguments and the application was rejected on 07.06.2021. Respondent No.2 had challenged the said order by filing Criminal Revision Petition No.47 of 2021 before the learned Sessions Judge, Nanded, who allowed the revision by setting aside the order dated 07.06.2021. It was then directed that the learned Magistrate should hear the complainant afresh and decide the application. The said order came to be passed by learned Sessions Judge on 24.03.2022. The present applicants had challenged the said order passed by learned Sessions Judge, Nanded by filing Criminal Writ Petition No.1509 of 2021. This Court by order dated 31.01.2022 and thereby setting aside the order, restored the Criminal Revision Application on the file of learned Sessions Judge, Nanded. It was directed that the learned Sessions Judge should hear the petitioner and decide the revision application on its own merits. By order dated 05.09.2022, a detailed order was passed by the learned Magistrate and the application under Section 156(3) of the Code of Criminal Procedure came to be partly allowed and the offence was directed to be registered

against respondent Nos.1 to 23 for the offence punishable under Sections 307, 143, 147, 148, 149, 188, 120(B) and 506 of Indian Penal Code and under Sections 3, 4 punishable under Section 27 of the Indian Arms Act. One of the accused then filed Criminal Revision Application No.100 of 2022 challenging the said order dated 05.09.2022 by learned Judicial Magistrate First Class before the learned Sessions Judge, Nanded. No stay was granted, though prayed and the order to that effect was passed on 08.09.2022. The said order was then challenged before this Court in Criminal Writ Petition No.1243 of 2022 before the Hon'ble Single Bench and by order dated 19.09.2022 ad-interim stay was granted, yet the FIR came to be registered on 16.09.2022 and, therefore, the applicants have no option, but to knock the doors of this Court. Now, in the meantime, charge-sheet has also been filed bearing Regular Criminal Case No.1365 of 2023.

4. Perusal of the entire charge-sheet would show that the offence has not been made out. The Medico Legal Certificate would show that there are grievous injuries, but there appears to be exaggeration. Nothing has been seized from the applicants though it is stated that iron rods, knives were used. In fact, the FIR itself is belated. Initially, when respondent No.2 had moved the learned Judicial Magistrate First Class, it was considered that the incident had allegedly occurred on 25.03.2020 and the applicant registered his online complaint on 25.02.2021. He

then sent the report to police station and Superintendent of Police by post on 24.02.2021. Therefore, there was apparently 11 months delay. There was no evidence to show that who has been murdered or prospective accused has caused death of any person. It is stated that the applicant i.e. respondent No.2 herein himself was absconding accused in Crime No.159 of 22020 registered in respect of the same incident. Then it was not a case for sending the matter for investigation under Section 156(3) of the Code of Criminal Procedure. Therefore, with this background, it would be unjust to ask the applicants to face the trial.

5. Per contra, learned APP as well as learned Advocate for respondent No.2 strongly opposed the application and submitted that it was the inaction on the part of the police to register the FIR as it can be seen that the informant had sustained the injuries. The Medico Legal Certificate would show that he has sustained about 3 grievous injuries. When he was posed as an accused, but when he himself was injured and there are documents to the effect that he was admitted in the hospital i.e. Yashoda Hospital, Nanded from 25.03.2020 to 24.04.2020, the police had every opportunity to go and meet him in the police station, record his statement, then they would have come to know as to how he had sustained the injuries. Merely by saying that the informant was shown to be absconding in another case, he cannot be deprived of his rights. The applicants rather consumed the time by filing Criminal

Revision Applications and the Writ Petitions twice and the said time was available for them to destroy the evidence and, therefore, when there is cross complaint pending, let there be trial.

6. We fully agree with the submissions on behalf of the State and respondent No.2 on the point that delay alone cannot be the ground for quashing the FIR and the proceedings. Delay can be explained and from the charge-sheet now it can be seen that on the request letter of police station, the MLC was registered and respondent No.2 was sent for medical examination. He was then admitted to private hospital and as aforesaid, he was admitted from 23.03.2020 to 24.04.2020. For the whole month, he was available in the hospital and under such circumstance, how the police can say that he was absconding. Now, it can be seen that there are cross complaints i.e. in respect of the same incident taken place at the same spot. Under such circumstance, let there be trial. We are not going into the aspects as to what is the role attributed to each of the applicants since the trial Court would be at liberty to take note of it and frame the charge as per the role.

7. Criminal Application stands rejected.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm