



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4134 OF 2024

Shrinivas s/o Bhagwan Rathod
Age: 25 years Occu.: At present NIL,
Selected candidate for the appointment
of Police Constable Sindhudurg
from VJ-A (DTA) category,
R/o. Udanaik Tanda, Tq. Kandhar,
District Nanded.

.. Applicant

Versus

1. The State of Maharashtra,
Through Police Inspector,
Police Station Kandhar,
Tq. Kandhar, District Nanded.
2. Ramrao Venkati Pawar,
Age:50 years, Occu.: Agri.,
R/o. Udanaik Tanda, Tq. Kandhar,
District Nanded.

.. Respondents

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Mr. V. D. Salunke, Advocate for the applicant.
Mr. N. R. Dayama, APP for respondent No.1/State.
Mr. N. S. Shah, Advocate h/f Mr. S. V. Natu, Advocate for respondent No.2.

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

**RESERVED ON : 20 FEBRUARY 2025
PRONOUNCED ON : 28 MARCH 2025**

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

. Present application has been filed under section 482 of the Code
of Criminal Procedure for quashing the Charge-sheet No.44 of 2020 i.e.
the proceedings in R.C.C. No.47 of 2020 pending before the learned

Judicial Magistrate First Class, Kandhar, District Nanded arising out of the FIR vide Crime No.138 of 2019 registered with Kandhar Police Station, District Nanded for the offences punishable under Sections 143, 147, 148, 149, 325, 323, 504, 506 of Indian Penal Code.

2. Heard learned Advocate Mr. V. D. Salunke for the applicant, learned APP Mr. N. R. Dayama for respondent No.1/State and learned Advocate Mr. N. S. Shah holding for learned Advocate Mr. S. V. Natu for respondent No.2.

3. It has been vehemently submitted on behalf of the applicant, who is arrayed as accused No.5 in the FIR, that the present applicant has been unnecessarily involved in the matter. He belongs to Laman community recognized as VJNT and he is belonging to DTA category. He is the only educated person in the family and after completing his B.A., he was preparing for the exams for appointment as Police Constable. Respondent No.2, his brothers and cousins had unnecessarily been to the house of applicant. Respondent No.2 is the husband of sister of applicant's mother. Thereafter, the altercations happened and the mother of the applicant was severely beaten. She lodged FIR vide Crime No.137 of 2019 for the offence punishable under Sections 143, 147, 148, 149, 324, 323 and 506 of Indian Penal Code. Charge-sheet has also been filed after completion of the investigation.

Now, respondent No.2 has roped all the family members of applicant's mother. The present FIR is the counterblast. The delay in lodging the FIR has not been explained at all. No overt act is attributed to the present applicant and therefore, it would be abuse of process of law to ask him to face the trial.

4. Per contra, learned APP as well as learned Advocate for respondent No.2 strongly opposed the application and submitted that the present applicant was the member of unlawful assembly, who had come with a common object. There was a court proceeding in respect of the matrimonial dispute of the brother of respondent No.2, but the informant was abused, assaulted with the help of sticks. The witnesses have also stated the presence of the applicant. Learned Advocate for respondent No.2 has relied on the decision in ***Bhe Ram Vs. State of Haryana, [(1980) 1 SCC 201]***, wherein it has been held that when there is offence under Section 149 of Indian Penal Code, it is not necessary that any specific act should be attributed to each accused. It is sufficient if it is proved that all the members of unlawful assembly shared the common object of the said assembly. Similar view was taken in ***Krishnappa and others Vs. State of Karnataka by Babaleshwara Police Station, [(2012) 11 SCC 237]***, wherein it has been observed :-

“20. It is now well settled law that the provisions of Section 149 Indian Penal Code will be attracted whenever

any offence committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or when the members of that assembly knew that offence is likely to be committed in prosecution of that object, so that every person, who, at the time of committing of that offence is a member, will be also vicariously held liable and guilty of that offence. Section 149 Indian Penal Code creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. This principle ropes in every member of the assembly to be guilty of an offence where that offence is committed by any member of that assembly in prosecution of common object of that assembly, or such members or assembly knew that offence is likely to be committed in prosecution of that object.

21. The factum of causing injury or not causing injury would not be relevant, where accused is sought to be roped in with the aid of Section 149 Indian Penal Code. The relevant question to be examined by the court is whether the accused was a member of an unlawful assembly and not whether he actually took active part in the crime or not.”

He further relied on the decision in ***Sushilabai w/o Vaijinath Pawar Vs. State of Maharashtra and others, [2023 (1) Mh.L.J. (Cri.) 700]*** to which ***[Smt. Vibha Kankanwadi, J.]*** was party and taking into consideration the fact that the petitioner had approached after a considerable delay, while invoking powers of the High Court under Section 482 of the Code of Criminal Procedure, it is observed that “a party cannot approach the High Court under Section 482 of the Code of

Criminal Procedure at his whim and caprice merely because no period of limitation in filing the petition under the aforesaid provision is provided. A petition under Section 482 of the Code of Criminal Procedure must be filed within a reasonable time and it should not be vitiated by inordinate delay and latches on the part of the petitioner.” Here, in this case, the charge-sheet was filed on 08.06.2020. The case history/roznama from the website has been produced, which shows that from 21.05.2022, the matter was pending for Bailable Warrant and thereafter, as the accused had not remained present, order of Non Bailable Warrant has been passed and the matter is pending for Non Bailable Warrant since 28.11.2024. Thereafter on 29.08.2024, the matter was taken on board and an application for cancellation of warrant was filed on behalf of present applicant and others. Therefore, the applicant was not even appearing before the Trial Court regularly, yet he want the discretionary relief. Hence, this is not a fit case for exercise of powers under Section 482 of the Code of Criminal Procedure.

5. Perusal of the FIR and the statements of witnesses including the injured would show that they have stated about the presence of the present applicant. Even the applicant stated that there is a cross FIR filed by his mother. Now, whether this FIR is counterblast can be decided by the Trial Court only. Existence of cross FIR's *prima facie* show that the incident had happened. At the same time, perusal of both the FIRs

would show that the place where the incident had taken place in the respective FIR's is different. The spot panchanama does not show that the house of the present applicant is to the forecorners of the boundary of the house of respondent No.2, but the spot there is shown on the public road. Therefore, who was the aggressor would be a point involved in cross FIRs/cross cases, which cannot be considered in this matter.

6. When the presence of the applicant has been stated by the informant and the witnesses and it is stated that all the accused had common object and the applicant being member of unlawful assembly was present there, then certainly the ratio laid down in ***Bhe Ram (Supra)*** and ***Krishnappa and others (Supra)*** is also required to be considered by the Trial Court. Certainly, a point to that effect has been made out by the respondents.

7. Interesting point to be noted is that the applicant had the knowledge about filing of the FIR against him, because he was arrested on 25.06.2019 and thereafter, it is stated that he has been released on bail. After filing of charge-sheet on 08.06.2020 as per E-Court Service Case Status, he has not approached this Court within reasonable time. Now, when he has been selected in the recruitment with Sindhudurg Police, he has filed the present application. There is no explanation given for approaching the Court belatedly and, therefore, we are

reiterating the observations from ***Sushilabai Vaijinath Pawar (Supra)***.

We do not find this this to be a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. There are disputed questions of fact. Application stands rejected.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm