



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

40 CRIMINAL APPLICATION NO.3547 OF 2023

- 1 Shafique Akbar Shaikh,
Age 35 yrs., Occ. Labour,
- 2 Rafique Akbar Shaikh,
Age 49 yrs., Occ. Driver,
- 3 Taufique Shafique Shaikh,
Age 23 yrs., Occ. Service,

All are r/o Rehman Nagar,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar.

... Applicants

... Versus ...

- 1 The State of Maharashtra
Through Police Station Officer,
City Police Station, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.
- 2 Ravindra Namdeo Gadekar,
Age 30 yrs., Occ. Labour,
R/o Near Vitthal Mandir,
village Jorve, Tq. Sangamner,
Dist. Ahmednagar.

... Respondents

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Mr. Vishal Kakde, Advocate h/f Mr. Shaikh M.A.J., Advocate for applicants

Mrs. Priya R. Bharaswadkar, APP for respondent No.1

Mr. Mayur Subhedar, Advocate (appointed) for respondent No.2

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

DATE : 28th JULY, 2025

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

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 initially for quashment of First Information Report vide Crime No.418/2023 dated 29.05.2023 registered with City Police Station, Sangamner, Tq. Sangamner, Dist. Ahmednagar, for the offence punishable under Sections 307, 324, 143, 147, 148 read with Section 149 of the Indian Penal Code, 1860 and under Section 4 punishable under Section 25 of the Indian Arms Act, 1959 and later on by way of amendment for quashing the proceedings in Regular Criminal Case No.481/2023 pending before learned Judicial Magistrate First Class, Sangamner.

2 The application was withdrawn as against applicant Nos.1 and 2 by order dated 01.08.2024. Now we are considering the application only in respect of applicant No.3.

3 Heard learned Advocate Mr. Vishal Kakde holding for learned Advocate Mr. Shaikh M.A. Jahagirdar for applicants, learned APP Mrs. Priya R. Bharaswadkar for respondent No.1 and learned appointed Advocate Mr.

Mayur Subhedar for respondent No.2. In order to cut short, it can be said that they have argued in support of their respective contention.

4 Respondent No.2 has lodged the said First Information Report in respect of incident dated 28.05.2023 and while lodging First Information Report he had given the names of about 17 persons, but name of present applicant No.3 has not been stated. Of course, it was stated that mob consisted of around 100-150 people. Here, certainly, the informant has sustained the injuries and the injury certificate of informant states that he has sustained grievous injuries and some witnesses have received simple injuries. Certainly, incident had taken place. The question is, as to whether present applicant No.3 had taken part in the commission of offence or not or in other words, whether there is *prima facie* case against applicant No.3 or not. In the supplementary statement, which is recorded after about five months of First Information Report i.e. on 25.10.2023, the informant has taken the name of applicant No.3 and it appears that by that time i.e. when his statement was recorded the present applicant No.3 was already arrested and, therefore, he says that he came to know that about 32 more persons have been arrested by the police. Perusal of statements of witnesses ASI Mr. Hemant Thorat, PSI Mr. Rajendra Devman Wagh, Police Naik Mr. Ravindra Ghungase, Police Naik Mr. Dnyaneshwar Shinde, Police Constable Mr. Machchhindra Barde, Police

Constable Mr. Mayur Gaikwad, Police Constable Mr. Amrut Adhav, Police Constable Mr. Balasaheb Gunjal, PSI Mr. Niwant Jadhav and PHC Mr. Amit Mahajan have taken the name of present applicant No.3. Perusal of their statements would show that they had arrested five accused persons and while interrogating them, they came to know about names of few more accused persons who were allegedly with the main accused on the day of incident. That means, it was not directly admissible. It has been tried to be made admissible or as a part of evidence indirectly by way of statement under Section 161 of the Code of Criminal Procedure. Disclosure of name of co-accused cannot be considered admissible. There is no Test Identification Parade held after the arrest of present applicant No.3. No specific role has been attributed to him. Though it was tried to be submitted on behalf of the prosecution that since Section 159 of the Indian Penal Code has been invoked, the presence of applicant No.3 at the spot would be sufficient in the trial to stand against him. We do not agree with the same. The presence of present applicant No.3 is not coming forward by way of identification, but it is by way of some confessional statements. What has been seized from the present applicant No.3 is the mobile and, therefore, there is nothing on record to establish any nexus between the incident and present applicant No.3. Therefore, to ask him to stand trial would be an abuse of process of law. Case is made out for exercise of powers under Section 482 of the Code

of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands partly allowed.
- ii) Criminal Application already disposed of as withdrawn as against applicant Nos.1) **Shafique Akbar Shaikh** and 2) **Rafique Akbar Shaikh** by order dated 01.08.2024.
- iii) The proceedings in Regular Criminal Case No.481/2023 pending before learned Judicial Magistrate First Class, Sangamner arising out of First Information Report vide Crime No.418/2023 dated 29.05.2023 registered with City Police Station, Sangamner, Tq. Sangamner, Dist. Ahmednagar, for the offence punishable under Sections 307, 324, 143, 147, 148 read with Section 149 of the Indian Penal Code, 1860 and under Section 4 punishable under Section 25 of the Indian Arms Act, 1959, stands quashed and set aside as against applicant No.3 **Taufique Shafique Shaikh**.
- iv) Fees of the appointed Advocate is quantified at Rs.7,000/- (Rupees Seven Thousand only), to be paid by High Court Legal Service Sub Committee, Aurangabad.

(**SANJAY A. DESHMUKH, J.)**

(**SMT. VIBHA KANKANWADI, J.)**

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