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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3543 OF 2025

Pankaj Bhagwan Chavan

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Prakash Wagh, Advocate for the Petitioner.

Mr. J.P. Yagnik, APP for the Respondent/State.

Mr. Pradeep Dupate, API, Koparkhairane Police Station, present.

CORAM : RAVINDRA V. GHUGE

&

GAUTAM A. ANKHAD, JJ.

DATE : 24th JULY, 2025

P.C. :-

1. We have considered the extensive submissions of the learned Advocate for the Petitioner and the learned APP. With their assistance, we have gone through the documents placed on record as well as the file containing the documents shown to the Court by the learned APP.

2. The Petitioner has put forth Prayer Clause 9(a), as under :-

“(a) This Hon’ble Court be pleased to direct the Respondents to add/apply Sections 109, 118(2), 312, and 313 of Bharatiya Nyaya Sanhita, 2023 in F.I.R. No.0362/2025;”

3. Sections 109, 118(2), 312 and 313 of Bharatiya Nyaya Sanhita, 2023 (for short ‘BNS’), read as under :-

“109. Attempt to murder.-(1) Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

(2) When any person offending under sub-section (1) is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death or with imprisonment for life, which shall mean the remainder of that person's natural life.

118. Voluntarily causing hurt or grievous hurt by dangerous weapons or means.-(1)xxxx

(2) Whoever, except in the case provided for by sub-section (2) of section 122, voluntarily causes grievous hurt by any means referred to in sub-section (1), shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than one year but which may extend to ten years, and shall also be liable to fine.

312. Attempt to commit robbery or dacoity when armed with deadly weapon.-If, at the time of attempting to commit robbery or dacoity, the offender is

armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

313. Punishment for belonging to gang of robbers, etc.-*Whoever belongs to any gang of persons associated in habitually committing theft or robbery, and not being a gang of dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."*

4. Having considered the extensive submissions of the learned Advocate for the Petitioner, it is apparent that the Petitioner prays that Section 109 of the BNS (earlier Section 307 of the IPC) for making an attempt to murder be invoked against the Accused in First Information Report (for short '**FIR**') No.0362 of 2025, registered on 14th April, 2025 at 23:11 hours with the Koparkhairane Police Station, Navi Mumbai. The FIR indicates that Sections 115(2), 117(2), 118(1), 189(1), 189(2), 191(1), 324(2), 351 and 352 of the BNS, have been invoked.

5. We have, therefore, gone through the statement recorded by the Petitioner, which is a part of the FIR, below Clause 12. For the sake of clarity, we are reproducing the relevant Paragraph No.3 of his statement, hereunder :-

"दि. 13/04/2025 रोजी रात्री 10:40 चे सुमारास मी माझे घरून हेरीटेज बार शेजारी असणा-या हेअर कटिंग सलून मधून केस सेट करून निघालो असता माझा मित्र नामे आकाश अरुण कुमार मिश्रा व उमेर खान हे फाम सोसा. येथे रोडवर मला भेटले तेव्हा उमेर याने सांगितले की त्याने त्याची गर्लफ्रेंड नामे दृष्टी शेड्डी हीला फोन केला होता व तीला तु कोणासोबत आहेस असे विचारले तेव्हा तिचा फोन श्लोक तांडेल याने घेतला व उमेर यास शिवीगाळ केली तसेच त्याने उमेर यास फाम सोसा येथे बोलावले आहे. म्हणून आम्ही आलो आहोत असे सांगितले. त्यावेळी तिथे ब्लोक तांडेल व त्याचे सोबत एक अनोळखी मुलगा असे दोघे जण एका एक्टीव्हा वर आले त्यांचे सोबत आमचा वाद सुरु झाला मी श्लोकला काय झाले असे विचारले तेव्हा त्याने माझी कॉलर पकडली व मला शिवीगाळी करू लागला त्यामुळे मी रागाने त्याचे कानाखाली 3 चापटी मारल्या त्यानंतर त्याने कोणाला तरी फोन लावून विनोद दादा मला मारले आहे तु इकडे ये असे सांगितले व त्यानंतर संदिप व रजा पटेल यास फोन लावून तेच सांगितले त्याचे सोबतचे मुलाने कोणाला तरी फोन केले. त्यानंतर 2 मिनिटात तेथे काही मुले आली व त्यातील काही मुलांनी मला लाथाबुक्यांनी मारण्यास सुरुवात केली नंतर आकाश यास लाथाबुक्यांनी मारहाण केली व उमेर यास चापटीने मारल्याने उमेर तेथून पळून गेला त्यावेळी संदिप पाटिल व विनोद म्हात्रे यांनी मला दगड मारले त्यावेळी मला काहीही समजणे बंद झाले. त्या वेळात तिथे कोणीतरी त्यांना मला मारण्यापासून अडवित होते सदर भांडणात माझा तोंडातील खालचा दात तुटून पडला तसेच माझे गळ्यातील सोन्याची चैन देखील तुटली, भांडण चालू असताना माझा मोबाईल कोठेतरी पडला व सापडला नाही. त्यानंतर मी स्वःतला वाचवित तेथून माझे मित्राची दुचाकी वाहन घेउन निघून रा.फ. नाईक शाळेजवळ गेलो, तेथून मी मित्रांना बोलावून पोलीस ठाणेस तक्रार देणेकरीता आलो."

6. The above narration of the incident that allegedly took place at 10:40 p.m. on 13th April, 2025, indicates that there was a scuffle between two groups. One person started abusing the

Petitioner in foul language and grabbed him by the collar, which infuriated the Petitioner who gave three slaps behind the ear of the said person. After around two minutes, some unknown persons came at the scene, and it is the Petitioner's complaint that they started kicking and punching him. One person slapped him. Two persons namely, Sandip Patil and Vinod Mhatre, hit the Petitioner with a stone. He became dizzy. Later, he realized that a tooth from the lower jaw (the second incisor) had broken. He has also narrated that the gold chain he was wearing had snapped and fallen. His mobile phone also fell, and he was unable to find it.

7. The above narration was made in Marathi by the Petitioner to the Police Authorities and which forms the part of the FIR. It is nowhere stated that any particular person or even an unknown person, who was allegedly a part of the group which allegedly assaulted the Petitioner, has snatched his gold chain and stolen it. It is also not his case that his mobile phone was stolen by one of them.

8. In the above backdrop, on Page No.10, we have perused the Out Patient Record Card of the Rajmata Jijau Hospital

Airoli, Navi Mumbai Municipal Corporation dated 14th April, 2025 with the time registered as 02:49:44 a.m.. The examination revealed an abrasion on the right side of the face, a missing tooth from the lower jaw, swelling over the occipital region, an abrasion behind the right ear, a complaint of bleeding from the ear, and a complaint of dizziness. On the right side of the said record (sheet), it is specifically mentioned that *“patient not willing to take any injections or treatment”*. The Petitioner has affixed his thumb impression next to the said remark, which was recorded as he declined to undergo treatment.

9. On page no. 11 of the Petition paper book, the time mentioned on the said document is 03:38 a.m., dated 14th April, 2025. It is noted therein that the Petitioner complained of vomiting and dizziness. However, the diagnosis records that there was no history of ENT bleeding or convulsions.

10. The learned Advocate for the Petitioner submits that he was advised an X-ray and a CT Brain Plain. However, the remark of the examining Doctor indicates that the patient (the Petitioner) was not willing to take any injections or treatment.

11. The learned Advocate for the Petitioner has canvassed that there are cross FIRs. In the FIR lodged by the other group, bearing no.0361of 2025 registered on 14.04.2025 at 21:24 hours, which is around 1 hour and 50 minutes prior to the FIR registered by the Petitioner, with the Koparkhairane Police Station, Navi Mumbai, a grave offence is registered against the Petitioner. Hence, if an offence under Section 109 of the BNS was recorded against the Petitioner, the same provision should be invoked against the other group as well. This Petition is filed for the said purpose.

12. We are unable to be convinced by such submissions. Sections are invoked, not to counter each other FIRs, but considering the nature of the offense and the narration in the complaint. What has been narrated against the present Petitioner is that he bit Ms. Shlok Subhash Tandel, aged 23 years, on her left hand finger which started bleeding. Thereafter, the Petitioner brought out a Koyta (sickle) and rushed to attack the informant, Ms.Shlok Subhash Tandel. She ducked and evaded the possible blow, which could have been life threatening. Thereafter, the Petitioner used the Koyta to hit another person namely, Adil. He also tried to evade the attack, but suffered a grievous injury on the

left arm. Hence, Shlok and Adil started running away from the scene. However, Akash Mishra took the Koyta from the hands of the Petitioner and attacked both of them. He threw the koyta towards them, but it missed both of them.

13. In view of the above, we do not find that this case is fit for invoking a Writ Jurisdiction to direct invoking of Section 109 of the BNS with reference to the Petitioner's FIR No.0362 of 2025.

14. The Petitioner has then prayed that Sections 312 and 313 of the BNS should also be attracted with reference to the FIR. We have reproduced Sections 312 and 313 of the BNS, herein above. They pertain to an attempt to commit robbery or dacoity while being armed with a deadly weapon, or belonging to a gang. In the statement recorded in the FIR, there is no allegation of robbery, dacoity, much less of being armed with a deadly weapon with the intention to commit robbery or dacoity. The prayer to attract these two sections also deserves to be rejected.

15. Considering Section 118(2) of the BNS, it is important to understand the necessary ingredients covered under Section

118(1) of the BNS. Section 118(2) of the BNS prescribes the punishment for an offence as defined under Section 118(1) of the BNS. The requirement is that a person must possess an instrument intended for shooting, stabbing, or cutting, or any instrument used as a weapon of offence that is likely to cause death. In the instance case, the Petitioner has stated in the complaint that he was hit by a stone. This is covered by Section 117 of the BNS. The FIR indicates that Section 117(2) of the BNS has been invoked. If the offence against the Petitioner is proved, the person would be punishable for the offence committed under Section 117(1) of the BNS.

16. In view of the above, we are not convinced that Section 118(2) of the BNS is attracted.

17. Being devoid of merit, this **Writ Petition is dismissed.**

(GAUTAM A. ANKHAD, J.)

(RAVINDRA V. GHUGE, J.)