

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.5634 OF 2025

Tejas Dilip Gaikwad,
R/at Jain Line Quarters, Yerwada, Pune .. Petitioner
Vs.
State of Maharashtra,
Through Vimantal Police Station, Pune .. Respondent

Mr. Vipul Vijayanand Dushing with Mr. Ajay Gawali, Mr. Tanmay Kate, Mr. Ashraf Kazi, Mr. Sangram Jadhav and Mr. Saurav Tadv, Advocates for the Petitioner.

Mr. J.P. Yagnik, Additional Public Prosecutor for the Respondent.

**CORAM : SHREE CHANDRASHEKHAR, CJ. &
GAUTAM A. ANKHAD, J.**

DATE : 10TH NOVEMBER 2025.

P.C. :

Aggrieved by registration of a First Information Report vide FIR No.378 of 2025 at Vimannagar Police Station, Pune on 4th August 2025, the petitioner has invoked jurisdiction of this Court under Articles 226 and 227 of the Constitution of India read with section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023. At prayer (c) in this writ petition, the petitioner has also laid a challenge to the Sanction Order dated 20th August 2025 issued under Section 23(1) of the Maharashtra Control of Organized Crime Act, 1999 (in short, "MCOCA").

2. Mr. Dushing, learned counsel for the petitioner, submitted that the petitioner is a law-abiding citizen from a respectable family and a responsible member of society. He contended that the FIR has been lodged on false allegations and that the petitioner has no connection whatsoever with the alleged offence. According to him, the mere act of attending the birthday celebration of a

person with criminal antecedents does not constitute an offence. There is no allegation in the FIR of any offence being committed by the petitioner. He submitted that the present case falls within the parameters laid down by the Hon'ble Supreme Court in "*State of Haryana v. Bhajan Lal*" 1992 SCC (Cri) 426.

3. Mr. Dushing referred to the provisions of Sections 189(2), 190, 193(1), 223, 270 and 353(2) of the Bharatiya Nyaya Sanhita, 2023 (in short, BNS); Sections 4 and 25 of the Arms Act, 1959; Sections 37(1), 37(3) and 135 of the Maharashtra Police Act, 1951; and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999, and submitted that none of the ingredients of these offences are disclosed against the petitioner in the complaint dated 4th August 2025. He relied upon the decision of this Court in "*Dilip Asaram Zagade v. State of Maharashtra & Ors.*" ABC 2019(I) 367 Bom and submitted that the FIR must contain a specific averment that the Central Government has, by a notification in the Official Gazette, regulated the possession of arms in the concerned area. The present FIR contains no such particulars. He therefore contended that the invocation of the Arms Act is illegal, as the sanctioning authority has failed to satisfy the statutory preconditions for its application. It was submitted that mere presence at a private birthday celebration does not furnish a ground to invoke the stringent provisions of MCOCA. The petitioner did not participate in any cognizable offence and the FIR ought to be quashed.

4. Mr. Yagnik, the learned Additional Public Prosecutor opposed the petition and submitted that a plain reading of the FIR makes out an offence. The video uploaded on Instagram shows that Firoz Ahmed Shaikh had organized a party in the basement of the Skymax Building, where about 40 to 50 young persons had

gathered with sticks and sharp weapons. The complaint also names several history-sheeters alleged to be present at the gathering. The FIR discloses that the crowd had gathered with weapons in their hands to cause terror. The assembly was unlawful and there was violation of the prohibitory order of the Deputy Commissioner of Police. He submitted that the matter requires investigation and the FIR ought not to be quashed.

5. We have heard the learned counsel for the parties and find no merit in the petition. It is settled law, as held in *Bhajan Lal* (supra), that an FIR may be quashed in the exercise of writ jurisdiction under Article 226 of the Constitution of India or under the inherent powers preserved by Section 482 of the Code of Criminal Procedure (corresponding to Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) where the allegations, if taken at their face value and accepted in their entirety, do not prima facie disclose the commission of any offence. Quashing may also be warranted where the allegations are so absurd and inherently improbable that no prudent person could reach a just conclusion, or where the proceedings are manifestly attended with mala fides. We find that none of the above parameters for quashing of the FIR are met in the present case.

6. The FIR has been registered by the police pursuant to a video uploaded on the social media platform Instagram. The complainant has stated that he, along with a team of police officers, inspected the CCTV footage at Skymax Building, Datta Mandir Chowk, Vimannagar, Pune, and upon enquiry learnt that one Firoz Ahmed Shaikh had gathered in an unlawful assembly in the car parking area in the basement of Skymax Building. Around 40–50 young men were seen assembled there. The FIR records that they were armed with sticks and sharp weapons, with the

intention of creating terror, while celebrating the birthday of one Nikhil Kamble, who has criminal antecedents. The FIR sets out material particulars of the incident, including the names of several history-sheeters. In our view, the uploading of a video, in which several individuals are seen wielding sticks and sharp weapons cannot be characterized as an innocuous publication of a private event. Had this been a simpliciter birthday celebration, there was no occasion for such a large number of persons to gather in defiance of the prohibitory order and to brandish weapons. *Prima facie*, such a display is capable of creating a sense of fear or intimidation in the minds of viewers on social media regarding the muscle power of the assembled persons. Significantly, it is also not the petitioner's case that upon noticing individuals carrying sticks and sharp weapons, he immediately left the assembly. The petitioner's submission that he was unaware of the criminal antecedents of the persons present cannot be accepted at this stage. This is a matter of investigation. It is well settled that the power to quash criminal proceedings is to be exercised sparingly and with great circumspection, and that the Court is not justified in embarking upon an enquiry into the reliability or genuineness of the allegations made in the FIR.

7. Section 189 of the BNS defines Unlawful Assembly. Section 189(2) and 190 of the BNS (which corresponds to Section 142, 143 and 149 of the IPC) reads as follows:

Section 189 : Unlawful assembly.

...

(2) *Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly and such member shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.*

Section 190: Every member of unlawful assembly guilty of offence committed in prosecution of common object.

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

8. The provisions make it clear that the liability under Section 149 arises by reason of mere membership of the unlawful assembly with a common object. Section 149 has two parts: the first part relates to actual commission of an offence in the sense that the persons present there had actively participated in the occurrence and the second part relates to knowledge inasmuch as the persons present there even if were not carrying any weapon or had not actively participated in the offence can be made liable by virtue of their mere presence in the crowd. In *Joseph v. State*, (2018) 12 SCC 283, the Hon'ble Supreme Court has held:

"11. Before we consider the testimony of the witnesses, let us consider the requirements for invoking the vicarious liability under Section 149 IPC. Section 149 IPC consists of two parts:

11.1. The first part of the section means that there exists common object and that the offence has been committed in prosecution of the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member.

11.2. The second part of the section means that even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 149, if it can be shown that the offence was such as the members knew was likely to be committed.

11.3. What is important in each case is to find out if the offence was committed to accomplish the common object of the assembly or was the one which the members knew to be likely to be committed. Once the court finds that the ingredients of Section 149 IPC are fulfilled, every person who at the time of committing that offence was a member of the assembly has to be held guilty of that offence. After such a finding, it would not be open to the court to see as to who actually did the offensive act nor would it be open to the court to require the prosecution to prove which of the members did which of the above two ingredients. Before recording the conviction under Section 149 IPC, the

essential ingredients of Section 141 IPC must be established.

12. *The scope of two parts of Section 149 IPC has been explained in Rajendra Shantaram Todankar v. State of Maharashtra [Rajendra Shantaram Todankar v. State of Maharashtra, (2003) 2 SCC 257 : 2003 SCC (Cri) 506] , wherein this Court has explained Section 149 and held as under: (SCC pp. 263-64, para 14)“14. Section 149 of the Penal Code, 1860 provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence, is a member of the same assembly is guilty of that offence. The two clauses of Section 149 vary in degree of certainty. The first clause contemplates the commission of an offence by any member of an unlawful assembly which can be held to have been committed in prosecution of the common object of the assembly. The second clause embraces within its fold the commission of an act which may not necessarily be the common object of the assembly, nevertheless, the members of the assembly had knowledge of likelihood of the commission of that offence in prosecution of the common object. The common object may be commission of one offence while there may be likelihood of the commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. In either case, every member of the assembly would be vicariously liable for the offence actually committed by any other member of the assembly. A mere possibility of the commission of the offence would not necessarily enable the court to draw an inference that the likelihood of commission of such offence was within the knowledge of every member of the unlawful assembly. It is difficult indeed, though not impossible, to collect direct evidence of such knowledge. An inference may be drawn from circumstances such as the background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime. Unless the applicability of Section 149 — either clause — is attracted and the court is convinced, on facts and in law, both, of liability capable of being fastened vicariously by reference to either clause of Section 149 IPC, merely because a criminal act was committed by a member of the assembly every other member thereof would not necessarily become liable for such criminal act. The inference as to likelihood of the commission of the given criminal act must be capable of being held to be within the knowledge of another member of the assembly who is sought to be held vicariously liable for the said criminal act.”*

(emphasis supplied)

The same principles have been reiterated in State of Punjab v. Sanjiv Kumar [State of Punjab v. Sanjiv Kumar, (2007) 9 SCC 791 : (2007) 3 SCC (Cri) 578].

13. *Creation of vicarious liability under Section 149 IPC is well elucidated in Allauddin Mian v. State of Bihar [Allauddin Mian v.*

State of Bihar, (1989) 3 SCC 5 : 1989 SCC (Cri) 490], wherein this Court held: (SCC pp. 16-17, para 8)“8. ...Therefore, in order to fasten vicarious responsibility on any member of an unlawful assembly the prosecution must prove that the act constituting an offence was done in prosecution of the common object of that assembly or the act done is such as the members of that assembly knew to be likely to be committed in prosecution of the common object of that assembly. Under this section, therefore, every member of an unlawful assembly renders himself liable for the criminal act or acts of any other member or members of that assembly provided the same is/are done in prosecution of the common object or is/are such as every member of that assembly knew to be likely to be committed. This section creates a specific offence and makes every member of the unlawful assembly liable for the offence or offences committed in the course of the occurrence provided the same was/were committed in prosecution of the common object or was/were such as the members of that assembly knew to be likely to be committed. Since this section imposes a constructive penal liability, it must be strictly construed as it seeks to punish members of an unlawful assembly for the offence or offences committed by their associate or associates in carrying out the common object of the assembly.”

(emphasis supplied)

The same principles were reiterated in paras 26 and 27 in Daya Kishan v. State of Haryana [Daya Kishan v. State of Haryana, (2010) 5 SCC 81 : (2010) 2 SCC (Cri) 1249] and also in Kuldip Yadav v. State of Bihar [Kuldip Yadav v. State of Bihar, (2011) 5 SCC 324 : (2011) 2 SCC (Cri) 632].

14. *Whether the members of the unlawful assembly really had the common object to cause the murder of the deceased has to be decided in the facts and circumstances of each case, nature of weapons used by such members, the manner and sequence of attack made by those members on the deceased and the circumstances under which the occurrence took place. It is an inference to be deduced from the facts and circumstances of each case (vide Lalji v. State of U.P. [Lalji v. State of U.P., (1989) 1 SCC 437 : 1989 SCC (Cri) 211] ; Ranbir Yadav v. State of Bihar [Ranbir Yadav v. State of Bihar, (1995) 4 SCC 392 : 1995 SCC (Cri) 728]; Rachamreddi Chenna Reddy v. State of A.P. [Rachamreddi Chenna Reddy v. State of A.P., (1999) 3 SCC 97 : 1999 SCC (Cri) 384]).”*

9. We are also unable to accept the petitioner’s submission that no cognizable offence is made out, as we note that the FIR has been registered, inter alia, under Section 353(2) of the Bharatiya Nyaya Sanhita, 2023, and under Sections 4 and 25 of the Arms Act, 1959, both of which are cognizable offences. Upon examining the grounds raised by the petitioner, we find that the petitioner has not challenged the applicability of Sections 4 and 25 of the

Arms Act. Consequently, the petitioner's reliance on *Dilip Zagade* (supra) is misplaced, as no grounds have been urged questioning the invocation of the Arms Act by Respondent No. 1. In any event, the facts of that case are entirely distinguishable. Therefore, in our view, the petitioner's submission is without merit.

10. As regards the petitioner's contention on the applicability of MCOCA, Section 2(1)(e) of the Act reads as follows:

"2(1)(e). "organised crime" means, any continuing unlawful activity, by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate,

- (i) by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency, or*
- (ii) by cultivating, producing, manufacturing, possessing, selling, purchasing, transporting or storing of narcotic drugs or psychotropic substances in commercial quantity, as notified under the Narcotic Drugs and Psychotropic Substances Act, 1985 in contravention of the said Act or rules framed thereunder, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person."*

11. The aforesaid provision makes it clear that "organized crime" encompasses any unlawful activity (i) committed by an individual, either singly or jointly, (ii) involving the threat of violence, and (iii) undertaken with the object of obtaining pecuniary gain or any other advantage, or for promoting insurgency. Thus, even assuming that the petitioner was not personally carrying a weapon or did not actively participate in the commission of any offence, the provision would still apply where the activity involves the use or threat of violence. The FIR itself records the presence of history-sheeters at the assembly, namely, Akash Vasant Kanchile, Nikhil Kamble, Firoz Shaikh, Sohail Kanul, Akhlakh Sheikh, Vanaraj

Jadhav, Akash alias Takya Mire, Rahul Ghadge, Sahil Kamble, Asif alias Bhandra Sheikh with 40 to 50 young men. The FIR specifically alleges that the weapons were intended to cause terror. Section 2(1)(e) of the MCOCA, read in the context of the allegations, specifically mentions the petitioner's presence in the company of a large number of history-sheeters. These allegations unquestionably warrant investigation, and such investigation cannot be interdicted at this stage.

12. The challenge to the Sanction Order dated 20th August 2025 at prayer (c) of the petition must also fail, as the materials on record demonstrate due application of mind by the authority. The Sanction Order sets out in detail the criminal antecedents of several individuals who were present on 2nd August 2025, many of whom were carrying sticks, rods and sharp weapons. We find no reason to interfere with these findings.

13. The matter is still under investigation and we see no reason to quash the FIR. **Criminal Writ Petition No.5634 of 2025 is dismissed.**

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]