

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

CRIMINAL WRIT PETITION NO. 363 OF 2026

Rehana Mohammed Zubair Namakwala & Anr. ..Petitioners
Versus
The State of Maharashtra & Ors. ..Respondents

Mr. Abhishek Kulkarni a/w. Sagar Wakale for Petitioners.
Ms. Mahalakshmi Ganapathy, Addl.PP for State/Respondent.

**CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.**

DATE : 17 FEBRUARY 2026

PC :

1. The Petitioners have filed this petition with a prayer for direction to transfer the investigation in C.R.No.581 of 2025 registered with Malvani police station, as well as, transfer of the investigation in C.R.No.584 of 2025 registered with the same police station. The other prayer is for direction to add Section 109 of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS') in C.R.No.581 of 2025. One more prayer is made for direction for fair and impartial investigation. The Petitioners are also seeking directions from the Court to the Respondent Nos.1 to 4 to pay

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Rs.10 lakhs as compensation for filing C.R.No.584 of 2025 against the Petitioner No.2.

2. Heard Mr. Abhishek Kulkarni, learned counsel for the Petitioners and Ms. Mahalakshmi Ganapathy, learned Additional P.P. for the State.

3. At the outset, we must point out that the husband of the Petitioner No.1 (father of the Petitioner No.2) had approached this Court vide Writ Petition No.3978 of 2025 for transfer of the investigation in C.R.No.581 of 2025 registered with Malvani police station. Another Division Bench of this Court on 03.12.2025 had passed the following order:

“1) Learned A.P.P. on instructions from Mr. Devarshi, PSI attached to Malvani Police Station, Mumbai, submitted that, on 15th May 2025 itself section 118(2) of BNS corresponding to section 326 of I.P.C. has been added to C.R.No.581/2025. He, on instructions further submitted that, investigation of crime is on the verge of completion and within one week from today the Investigating Agency will submit chargesheet before jurisdictional Magistrate. The said statement is accepted.

2) Perusal of the record and in particular medical certificates suggest that, section 118(2) is in fact applicable to the crime in question. After perusing the record, we are of the view that there is no need to

transfer the investigation of C.R.No.581 of 2025 registered with Malwani Police Station, Mumbai.

3) In view of addition of the said section to the crime, the grievance of the Petitioners has been worked out. The other prayers are consequential in nature and we do not see any reason to further entertain the Petition.

3.1) Both the Petitions are accordingly disposed off.”

4. In spite of this order, the present petition is filed by the wife and son of the Petitioner Mohammad Jubair Siddiq; who had filed Writ Petition No.3978 of 2025.

5. Mohammad Jubair Siddiq himself is an accused in C.R.No.584 of 2025. His anticipatory bail application was rejected by a Single Judge Bench of this Court vide the order dated 14.10.2025 in A.B.A.No.1796 of 2025. The said accused Mohammad Jubair Siddiq had approached the Hon’ble Supreme Court for the same relief of anticipatory bail by filing Special Leave to Appeal (Crl.) No.16769/2025. The Hon’ble Supreme Court on 17.10.2025 passed the following order:

“ Learned counsel appearing for the petitioner seeks permission to withdraw this petition with liberty for the petitioner to surrender and apply for regular bail.

The Special Leave Petition is, accordingly, dismissed as withdrawn with liberty to the petitioner to surrender within two weeks from today and apply for regular bail before the Trial Court. If such a prayer is made, the same shall be considered by the Trial Court on its own merits, without prejudice to the right of the Investigating Agency to seek for police remand.”

6. In this background, now the present petitioners have approached this Court for the reliefs as mentioned herein above. It must be noted that, till today, the Petitioner No.1's husband Mohammad Jubair has not surrendered before the Court pursuant to the liberty granted by the Hon'ble Supreme Court. In spite of this background, learned counsel for the Petitioners insisted that the Petitioners are entitled for the reliefs claimed in this petition. The Petitioner No.2 is not even an accused in any of these two offences. There was some reference to him in one of the remand reports, but, learned Addl.PP on instructions states that the Petitioner No.2 is not named as an accused in that offence. The Petitioner No.1 is one of the accused in C.R.No.584 of 2025. As per the ratio laid down by the Hon'ble Supreme Court in the case of Union of India and another Versus W.N.Chadha¹, the Petitioner

1 1993 Supp (4) Supreme Court Cases 260

No.1 does not have any locus to ask for transfer of investigation in C.R.No.584 of 2025. The relevant paragraph-120 of the said Judgment is as follows:

“120. For all the aforesaid reasons we unhesitatingly set aside the order of the High Court quashing the letter rogatory dated 5/7th February, 1990 and the rectified letter rogatory dated 21st/22nd August, 1990 issued in pursuance of the orders passed by the Special Judge. The respondent who is a named accused in the FIR has no locus standi at this stage to question the manner in which the evidence is to be collected. However, it is open for the respondent to challenge the admissibility and reliability of the evidence only at the stage of trial in case the investigation ends up in filing a final report under Section 173 of the Code indicating that an offence appears to have been committed.”

7. In spite of this, learned counsel for the Petitioners made a strong submission before us that the Court can still grant relief in this petition in favour of the petitioners.

8. C.R.No.581 of 2025 is lodged by the Petitioner No.1's husband i.e. the aforementioned Mohammad Jubair Siddiq. The allegation in that FIR is that on 09.05.2025 there was some quarrel between his elder son Kais and one Imran Siddiq. At about 3:30p.m. Mohammad Jubair Siddiq went in the area of Ramdev

building. According to him, there were ten persons present there including Imran Siddiq and one Saud. They started assaulting with kicks and fist blows. According to him, ladies from his families were touched inappropriately. He then described the incident in which he himself and his relatives including his brother, brother in law and mother were assaulted with a wooden stick, rod and a knife. There were injuries to Mohammad Jubair Siddiq the informant, his wife i.e. the present Petitioner No.1 and others. According to him, the Petitioner No.1's gold chain was also taken away. On these allegations, the F.I.R. was lodged against the nine named and ten unknown persons. The investigation was carried out and the charge-sheet was filed in this particular offence i.e. C.R.No.581 of 2025. The Petitioners have annexed a copy of the charge-sheet to this petition. It includes statements of eye witnesses Mohiz Mubin Shaikh, Sahil Mehboob Shaikh, Usman Alihasen Shaikh and Mubarak Israr Ali Siddiqui. All these eye witnesses have supported the case of the first informant in that FIR i.e. Mohammad Jubair Siddiq.

9. As far as, C.R.No.584 of 2025 is concerned, the

investigation is still in progress and the charge-sheet is not yet filed. However, learned Addl.PP produced a copy of the investigation papers before us for our perusal.

10. Learned counsel for the Petitioners made the following submissions:

Though the incident had occurred on 09.05.2025, the police did not immediately lodge the F.I.R. The police had threatened the Petitioner No.1's husband and other family members. Hence, there was a delay of five days. But even then C.R.No.581 of 2025 lodged by the Petitioner No.1's husband was registered in the midnight of 15.05.2025 at around 12:15a.m., that was prior to registration of C.R.No.584 of 2025. He submitted that the injured from the other group i.e. the victim in C.R.No.584 of 2025 were taken to a private hospital and the police did not insist to take them to a Government hospital and, therefore, the real nature of the injuries suffered by the alleged victims in C.R.No.584 of 2025 is not brought-forth. Section 109 of the BNS is wrongly invoked in C.R.No.584 of 2025. There was no serious injury

caused to anybody from the opposite group of the Petitioners and yet the police insisted on adding Section 109 of the BNS. On the other hand, though there were serious injuries caused to the petitioners' group, Section 109 of the BNS was not applied. The police had filed their reply in anticipatory bail application preferred by the Petitioner No.1's son Kais. In that reply, there is a specific reference that the first informant Saud Jubair Balim in C.R.No.584 of 2025 had mentioned that he did not have grievance against anybody. Accordingly, a station diary entry was made on 10.05.2025. The same reply also mentions that the Petitioner No.1's husband Mohammd Jubair Siddiq also did not have grievance against anybody. Similar entry was taken in the station diary. Thus, though there was settlement between the parties, the police unfairly lodged the F.I.R. in both the cases after about five days. According to the learned counsel, this itself was a malafide act on the part of the police.

11. Learned counsel submitted that the charge-sheet is filed in a haste only in C.R.No.581 of 2025 and the investigation is still continued in the cross F.I.R. i.e. C.R.No.584 of 2025. There were

at least three eye witnesses who have named three other accused persons who were the members of an unlawful assembly in C.R.No.581 of 2025. Those three members of the unlawful assembly were Salman @ Bunny, Mehram Amrohi and Abujar Amrohi. Their names are mentioned by the eye witnesses Sahil Mehboob Shaikh, Usman Alihasen Shaikh and Mubarak Israr Ali Siddiq. Similarly, their names are mentioned by police constable Yogesh Garud. But they are not shown as accused in the charge-sheet. He, therefore, submitted that for all the above reasons, the investigation is required to be transferred to some other police station.

12. Learned counsel relied on a few judgments in support of his submissions, as follows:

i) **Bharati Tamang Versus Union of India and others²**.

The Hon'ble Supreme Court in this case had held that, if deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which tried to hide the realities or covering the obvious deficiency, courts have to deal with the same with an iron hand appropriately within the framework of law.

2 (2013) 15 Supreme Court Cases 578

It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

In the same Judgment it was further observed that Whether it be due to political rivalry or personal vengeance or for that matter for any other motive a murder takes place, it is the responsibility of the police to come up to the expectation of the public at large and display that no stone will remain unturned to book the culprits and bring them for trial.

ii) Dharam Pal Versus State of Haryana and others³

In this case the Hon'ble Supreme Court held that it had to be kept in mind that impartial and truthful investigation is imperative and if there is indentation or concavity in the investigation, then it affects the faith in the investigation.

The Hon'ble Supreme Court further observed that, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination.

iii) Babubhai Versus State of Gujarat and others⁴

In this case, the Hon'ble Supreme Court observed that the Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness.

It was also observed that where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a

3 (2016) 4 Supreme Court Cases 160

4 (2010) 12 Supreme Court Cases 254

situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation.

iv) **Anant Thanur Karmuse Versus State of Maharashtra and others.**⁵

By referring to an earlier Judgment, the Hon'ble Supreme Court reiterated that, in so far as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such powers should be exercised, but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and to instill confidence in investigation.

13. Learned Additional P.P. Ms. Mahalakshmi Ganapathy pointed out the background of the case. She submitted that the petitioners have not mentioned the order passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No.16769/2025. She submitted that, till today, the Petitioner No.1's husband has not surrendered and thus, there is a clear violation of the direction of the Hon'ble Supreme Court. On this ground alone, the petition

5 (2023) 5 Supreme Court Cases 802

should not be entertained. As mentioned earlier, she also produced the investigation papers in C.R.No.584 of 2025. She submitted that the Petitioner No.2 has absolutely no locus to approach this Court as he is not an accused in C.R.No.584 of 2025. He is not even a complainant or witness in C.R.No.581 of 2025. She submitted that there is no flaw in the investigation.

14. We have considered these submissions. As mentioned earlier, the petitioners have not mentioned about the order passed by the Hon'ble Supreme Court in the aforementioned Special Leave to Appeal (Crl.) No.16769/2025, whereby the Petitioner No.1's husband was given liberty to surrender before the Court. The Petitioner No.1's husband had approached this Court in the past for transfer of investigation. That petition was not allowed. In spite of that, this petition is filed for the similar relief. The petitioners have not approached this Court with clean hands and have not disclosed the important and relevant material. On that ground alone, the petition is required to be dismissed. In any case, the other grounds raised by the learned counsel for the petitioners do not warrant transfer of investigation.

15. As observed by the Hon'ble Supreme Court in the case of Anant Thanur Karmuse (supra) such order of transfer of investigation cannot be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situation. In the present case, we do not find any such situation.

16. The investigation in respect of C.R.No.584 of 2025 includes a statement of the victim which is recorded U/s.183 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS'). In that statement, the said witness has stated before the Magistrate on oath that the Petitioner No.1's husband had threatened him with a gun and had forced him to sit in a four wheeler. He was taken to Balwadi ground. One of the accused Sohail had given a blow with a metal key on this witness's face causing injury near his eye. The Petitioner No.1's husband was instigating others to commit their murder. When his friend Saud (first informant in C.R.No.584 of 2025) tried to intervene, the Petitioner No.1's son Kais assaulted Saud with a knife on his head and ear causing

bleeding injury. Mohammad Jubair Siddiq had assaulted Saud with a wooden stick. The Petitioner No.1, her husband and other relatives had assaulted Saud and three others from Saud's group including the said witness. There are supporting statements of the eye witnesses and there is injury certificate in respect of Saud's injury. There are three injuries over left pinna, occipital region and left parietal region. They were caused by a sharp object. The size of the injury over occipital region was 9x0.2x0.5cm. Therefore, though it is described as simple injury, it was quite big and it was on a vital part i.e. on the head. It was caused by a sharp weapon. Therefore, the allegations against the Petitioner No.1's group are not baseless. The investigation is still going on.

17. As far as the investigation in C.R.No.581 of 2025 is concerned, though, three persons who are named by the eye witness are not mentioned in the charge-sheet as accused, significantly, the Petitioner No.1's husband has not named them in the F.I.R. which was recorded before the statement of the eye witness. Apart from the F.I.R., the statement of the police constable Yogesh Garud who had reached the spot mentions that when he

reached there on receiving the information about the incident, he saw that Saud was seriously injured. This statement recorded on 15.05.2025 also supports the case of the first informant Saud in C.R.No.584 of 2025. Therefore, it can be seen that the investigation in both the offences is proceeding in the right direction. No extraordinary situation is pointed out for transfer of investigation. We are not impressed by the submission that though both the parties have settled, police still went ahead and lodged the two offences. If cognizable offences of this nature were reported, the police were duty bound to register the offences. The Petitioners have not approached this Court with clean hands. On all these counts, we are not inclined to allow this petition.

18. The petition is accordingly dismissed.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)