

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

WRIT PETITION NO.703 OF 2026

Baban Dattu Gawde And Anr.)..Petitioners

Versus

The State of Maharashtra)
Through Khed Police Station,)
Taluka Khed, District Pune & Ors.)..Respondents

Mr. Nilesh Wable for the Petitioners.

Ms. Mahalakshmi Ganapathy, Addl. P.P. for the Respondent No.1-State.

Mr. Subhash Sadashiv Chavan, Police Inspector, Khed Police Station,
present.

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

DATE : 18th MARCH, 2026

P.C. :

1) We have heard Mr. Nilesh Wable, learned Counsel appearing for the Petitioners and Ms. Mahalakshmi Ganapathy, learned Addl. P.P. for Respondent No.1-State.

2) Ordinarily, since only a show cause notice is sought to be quashed, the Petitioner had the remedy to approach the Executive

Magistrate and put forth his case showing cause as to why the proceedings should not be entertained. However, the learned Counsel for the Petitioners has made out an exceptional case, where interference from this Court is necessary in the background of the case.

3) The impugned show cause notice dated 13th November 2025, issued by Respondent No.2-Executive Magistrate and Tahsildar Khed, Taluka Khed, District Pune, mentions that it was issued under Section 130 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), bearing Chapter Case B.N.S.126/SR/458/2025. A prayer is made for quashing of this notice. The notice is issued against both the Petitioners. The notice mentions that the Special Executive Magistrate, Khed, District Pune, had received an information from the Station House Officer, Khed Police Station on 11th November 2025 that the Petitioners were likely to commit breach on some petty reason, by indulging in fight and quarrel, thereby the public peace was likely to be breached. The notice mentions that the Executive Magistrate was satisfied in that behalf and therefore, in his opinion, there was sufficient reason to take action under Section 126 of the BNSS. The notice further mentions that the Petitioners were required to show cause, as to why they should not be

directed to execute a bond of Rs.10,000/- for a period of one year, with one surety each. The Petitioners were directed to appear before the Executive Magistrate.

4) The Petitioners have challenged the said show cause notice before us. The learned Counsel for the Petitioners invited our attention to the proposal dated 11th November 2025, annexed at page 56 of this Petition.

5) The Proposal mentions that one Mr. Keruji Balaji Gawde and both the Petitioners were residing at Village Pur, Taluka Khed, District Pune. The Petitioners had abused and threatened Keruji Gawde through a telephonic call, therefore, N.C. No.2423 of 2025, was registered at Khed Police Station, under Section 351(4) of BNSS on 26th October 2025. The proposal further mentions that the Petitioners were short tempered and there was a possibility that they would commit even more serious offence and, therefore, it was necessary to take a bond to maintain peace under Section 126 of the BNSS by following the procedure under Section 135 of the BNSS.

6) The learned Counsel for the Petitioners invited our attention to the Order dated 14th November 2025, passed by a Division Bench of this Court in Criminal Writ Petition No.5746 of 2025. He submitted that the said Petition was filed by wife of the Petitioner No.1, for directions to register the F.I.R. However, it was withdrawn with liberty to file a private complaint. In that Petition, the Petitioner No.1's wife had sought action against the Police Officer, who had initiated the proposal against the Petitioner. He submitted that during the pendency of the said Writ Petition, this proposal was initiated and, therefore, it was clearly a *mala fide* exercise of power on the part of the said Police Officer. The same Police Officer is present in the Court today.

7) We find substance in the submissions of the learned Counsel for the Petitioners. Apart from that, even the proposal does not have any factual basis. The N.C. was registered on 26th October 2025. The learned Addl. P.P., based on the documents brought by the said Police Officer could not point out any Order by the concerned Magistrate permitting investigation in that N.C. Therefore, there was no way to verify the truthfulness or otherwise of the allegations made against the Petitioners in the said N.C.. Short circuiting this procedure, the Police

Inspector has taken recourse to initiation of proceedings under Section 126 of the BNSS. We find this action of the Police Inspector *is not bona fide*. On both these counts, we are satisfied that the action taken by the Police Inspector was *mala fide*.

8) Section 126 of the BNSS reads thus :

126. Security for keeping peace in other cases.- (1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of the opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond or bail bond for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.

9) As can be seen that the proposal does not indicate any investigation carried out in respect of the allegations made in the N.C. and therefore, there was no basis for the Police Inspector to initiate the proposal. Similarly there was no specific material before the Executive Magistrate to enable him to observe that the Petitioners were likely to commit breach of peace or disturb the public tranquility or to do any wrongful act which may probably occasion a breach of peace or disturb the public tranquility.

10) The requirement of law of taking permission for investigating a non-cognizable case, cannot be short circuited by taking resort to these proceedings.

Section 174 of the BNSS reads thus :-

174. Information as to non-cognizable cases and investigation of such cases.- (1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf, and,-

- (i) refer the informant to the Magistrate;
 - (ii) forward the daily diary report of all such cases fortnightly to the Magistrate.
- (2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.
- (3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.
- (4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

In the present case, the Police Officer could not have investigated into the truthfulness of the allegations made in the N.C. without any Order from the Magistrate to that effect.

11) Considering this background, we are satisfied that this is a fit case, where interference from this Court is necessary.

Therefore, we are inclined to allow this Petition. Though there are other prayers for directing inquiry against the Police Officer, the learned Counsel for the Petitioners is not pressing those prayers.

13) Hence, the following Order :-

: O R D E R :

(i) The Petition is allowed.

(ii) The show cause notice dated 13th November 2025, issued by Respondent No.2-Executive Magistrate and Tahsildar Khed, Taluka Khed, District Pune, issued under Section 130 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), bearing Chapter Case B.N.S.126/SR/458/2025, is quashed and set aside.

(iii) Writ Petition is disposed off in the aforesaid terms.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)