



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 965 OF 2025

Dipanshu s/o Devchand Fandi and ors. .Vs. State of Maharashtra, thr. PSO, PS
Mauda Dist. Nagpur

WITH

CRIMINAL APPLICATION (APL) NO. 972 OF 2025

Naresh s/o Tarachand Motghare and ors. .Vs. State of Maharashtra, thr. PSO, PS
Mauda Dist. Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr A.V. Band, Advocate for the applicants in both
applications.

Mr. N.B. Jawade, Advocate for the non-applicant No.1 in
both applications.

CORAM : URMILA PHALKE JOSHI, J.

DATE : 16.01.2026

Heard.

2. **ADMIT.**

3. Heard finally with the consent of learned counsel
for the parties.

4. Both the applications are preferred by the
applicants for quashing of the First Information Report in
connection with crime No.10/2023 registered with the non-
applicant No.2-Police Station Mauda District Nagpur Rural

and consequent proceeding charge-sheet bearing RCC No.250/2024 under Sections 353, 332, 294, 143, 147, 149, 323, 504 and 506 of the Indian Penal Code (for short, 'IPC') . Crime is registered against the present applicants on the basis of report lodged by the informant PSI Pritam Ajabrao Pinpalkar. The facts of the present case show that one woman, her husband alongwith relatives approached police station Mouda in order to lodge report against one Raghuvendra Ravindra Upadhyaya, who is working as a supervisor in Haldiram Company at Gumthala and had reportedly outraged her modesty and was blackmailing her and her family members from 06.01.2023. The victim in that crime and her relatives went to police station Mouda at about 3 pm for lodging their report for the harassment she faced and upon threats given by Raghuvendra. When they narrated the incident to police personnel's they refused to register the FIR and therefore, all the relatives annoyed. The family members of the victim waited till 7.30 p.m. but the report was not accepted. When the family members of the victim asked the police personnel's as to why they were not registering the offence, the police personnel's started alleged misbehaving with the family members of the victim. It was alleged that the present applicants also present there and they have abused the police personnel's in filthy language as well as manhandled them and also assaulted them. In the said incident, two police constables sustained the injuries. On the basis of the said

report, police have registered the crime against all the applicants on an allegation that all the applicants formed unlawful assembly and in furtherance of the common object of that assembly committed the said offence. On the basis of the report, police have registered crime against present applicants.

5. Heard learned counsel for the applicants, who submitted that as far as the applicants are concerned, their mere presence is not sufficient to attract the offence punishable under Sections 143, 147, 353, 332, 294, 323 504 and 506 of the IPC. He submitted that except the applicant Dipanshu i.e. applicant No.1 in criminal application No.965/2025, none was seen in the mobile video obtained by one Sagar Nagpure. He submitted that considering the entire investigation papers as far as presence of other applicant is concerned, which was due to the market day on that day. He submitted that except their presence, nothing is alleged against them to show that they have either manhandled the police personnel's or any overt act is attributed by them. Therefore, applications deserve to be allowed and the FIRs and consequent proceeding against them be quashed and set aside.

In support of his contention he placed reliance on the decisions of this Court in *Criminal Application (APL) No.1114 of 2022 (Paresh s/o Ramchandra Kothari vs. The*

State of Maharashtra and another) and in *Criminal Writ Petition No.30/2021 (Tukaram @ Majoj Parab and another vs. State thr. Officer-in-charge Crime Branch and another)*.

6. Per contra learned APP strongly opposed the said contentions and submitted that the alleged incident has taken place in the premises of police station, when victim and her relatives went to police station to lodge the FIR. Police personnel's were manhandled by the mob of which the present applicants were the members. He invited my attention towards the panchanama as well as the various statements of the witnesses and medical certificates and submitted that two police constables were injured in the said incident and their medical certificates are also placed on record. Thus, considering the *prima-facie* case made out against the present applicants at this stage, no case is made out to quash and set aside the FIR. He submitted that whether any overt act attributed to them or not is matter of evidence. At this stage, their presence with the other members being the members of unlawful assembly, is sufficient. He submitted that it is the constructive liability and in view of that, applications deserve to be rejected.

7. After hearing both the sides and on perusal of the investigation papers, it reveals that crime is registered on the basis of the report lodged by the police officer alleging that

when one lady along with her husband and relatives were at the police station to lodge the FIR the present applicants who were the members of the unlawful assembly were insisting the police to register the FIR and as there was delay in registering the FIR at that time the present applicants taken the law in their hands and assaulted the police personnel's, manhandled them and also abused them in the filthy language. During investigation, the investigating officer has drawn the spot panchanama as well as the statements of the various witnesses. Medical certificates on record show that two police constables have sustained injuries in the said incident. Video recording and seizure panchanama is also on record which also substantiates the allegations levelled against the present applicants. Bail orders passed by this Court also show that from the video clips it reveals that a person has been beaten by 10 to 15 persons. However, it is not clear from the video clips whether police officers were also beaten nor there is anything in the clips to show that police officers are beaten by any other person. The observation further shows that on the basis of injury certificates it is difficult to comment whether the applicants have assaulted the police officers but it is clear that the applicants have mercilessly beaten a person who was in the police custody allegedly for molesting the female employee in the company. Thus, the observation of this Court while considering application for grant of bail of the applicant Naresh Tarachand Motghare and others is also

relevant at this stage. The statements of the various witnesses also disclosed the involvement of the present applicants in the alleged incident. Admittedly, the offence registered against present applicants is that they are the members of the unlawful assembly and being the members of the unlawful assembly, their involvement in the said offence. Section 149 of IPC has its foundation on constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Admittedly mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that common object is one of those set out in section 141. Whether there was common object of an unlawful assembly is there or not is matter of evidence. At this stage it is relevant that section 149 of the IPC makes every member of an unlawful assembly at the time of committing of the offence guilty of the offence. The Section creates a vicarious liability for the unlawful acts committed pursuant to the common object by any other member of the assembly. The basis of such constructive liability is mere membership of such assembly with the requisite common object or knowledge. Therefore, once the Court holds that certain accused persons formed an unlawful assembly and an offence is committed by any member of that assembly in prosecution of the common object of that assembly, or such as the members of that unlawful assembly is

to be held guilty of the offence. As observed earlier that whether present applicants were sharing unlawful assembly is a matter of evidence. At this stage, it would not be proper to observe that there was no common object shared by the present applicants with the alleged offence.

8. Learned counsel for the applicants placed reliance on the observations of this Court at Principal Bench. On perusal of the facts of that case it reveals that the facts are not identical with the present applications. Therefore, it is not helpful to the present applicants.

9. In view of the facts and circumstances that the present applicants were the members of unlawful assembly their presence is also witnessed by various witnesses. Injury certificates are also there. *Prima-facie* case is made out against the present applicants and therefore, I am not inclined to entertain the applications at this stage.

10. In view of that both the applications deserve to be rejected.

11. Accordingly, the applications are rejected.

(URMILA PHALKE JOSHI, J.)