

MHTH010026642025



SESSIONS CASE NO.345/2025

State of Maharashtra

(Through Bhayandar Police Station,

Dist. Thane

...Prosecution

V/s.

Kuldeep Jain alias Kuldeep Rajnikant Gandhi

...Accused.

ORDER BELOW EXH.12

The present application is filed by applicant/accused for discharge under Section 227 of the Code of Criminal Procedure, 1973 from present case.

The prosecution case/case Background -

2] The prosecution case, in brief, is that Smt. Kanchan Ashok Gaikwad was serving as Assistant Commissioner and Designated Officer of Mira Bhayandar Municipal Corporation. She was duly empowered by the Commissioner to initiate proceedings against unauthorized constructions under the Maharashtra Regional and Town Planning Act, 1966. It is the case of the prosecution that on 21.02.2023 at about 5.30 p.m., the Assistant Commissioner, municipal engineers, demolition staff,

Maharashtra Security Force personnel, police personnel and JCB operators visited Solitaire Heights for taking demolition action of unauthorized construction. It is alleged that at that time present accused alongwith 3 others were present at the spot. The prosecution alleges that accused persons in furtherance of the common intention of all the accused, obstructed the municipal authorities from discharging their official duties. It is further alleged that he participated in preventing demolition, threatened the municipal officers, abused them, pushed the officers and security personnel and wrongfully restrained them by preventing them from leaving the premises. On the basis of the complaint lodged by Smt. Kanchan Ashok Gaikwad, Crime No. I-83 of 2023 came to be registered for offences punishable under Sections 353, 341, 323, 352, 504, 506 read with Section 34 of the Indian Penal Code. Upon completion of investigation, charge-sheet came to be filed against all the accused.

3] I have given anxious consideration to the rival submissions advanced by the learned counsel Mr. Jigar Shah for the applicant and the learned Additional Public Prosecutor Smt. Kshirsagar for State. I have also carefully gone through the First Information Report, police report under Section 173 of the Code of Criminal Procedure, statements of witnesses, documentary evidence, seizure panchanamas, electronic evidence including CCTV footage, notices issued by the Mira Bhayandar Municipal Corporation and the entire charge-sheet papers.

Contention of the applicant -

4] Learned counsel appearing for the applicant submitted that the entire charge-sheet material, even if accepted at its face value, does not disclose commission of any offence by the applicant. It is submitted that no ingredients of the offences alleged are made out and therefore the applicant deserves to be discharged under Section 227 of the Code of Criminal Procedure. The learned Advocate appearing for the applicant submitted that the applicant has been falsely implicated in the present crime and that the entire prosecution case is a result of misunderstanding and exaggeration of the actual incident. It is contended that the applicant has not committed any overt act attracting the ingredients of the offences alleged in the charge-sheet. According to the applicant, the CCTV footage merely depicts his presence near the JCB machine and does not show him assaulting any public servant, obstructing demolition work, causing hurt, intentionally insulting anyone or extending criminal intimidation. It is further submitted that mere presence at the place of occurrence does not constitute an offence nor does it establish common intention under Section 34 of the Indian Penal Code. The learned counsel argued that there is no material to demonstrate that the applicant voluntarily obstructed any public servant or used criminal force against any officer. It is also submitted that the witness statements are vague and omnibus in nature and do not attribute any specific role to the applicant. The applicant further contended that he had cooperated with the investigation. Continuation of the criminal proceedings in the absence of sufficient material would amount to abuse of the process of law. Placing reliance upon the settled principles governing discharge under Section 227 of the Code

of Criminal Procedure the learned counsel prayed that the applicant be discharged from the present Sessions Case. There is delay in lodging FIR which is not satisfactorily explained. Mandatory requirement at the time of producing electronic evidence is not complied. No mention about how Section 34 is applicable. Name of Suresh Bhandari is not appeared in FIR. Prakash Jain is not made party in the present matter. Statments of persons gathered there are not recorded. Applicant is the person who already filed cases against accused Nos.1,2 and 4 for removal of construction then why should applicant/accused restraint the informant and other persons is the question. Applicant was just present at the spot. He had neither obsetructed nor used criminal force on public servant. It is lastly submitted that even if the entire prosecution case is accepted as true, the charge-sheet does not disclose any material connecting the present applicant with the commission of the alleged offences. Therefore, there are no sufficient grounds for proceeding against them and the application deserves to be allowed.

Material against accused -

5] The first informant was acting within the scope of her official duties. The material further discloses that the prosecution has produced the notice dated 27.01.2023 issued by Smt. Kanchan Ashok Gaikwad to accused No.1 Kalpesh Kapoorchand Jain, Shri Prakash Jain and M/s. B.A.C. Planners and Engineers Pvt. Ltd. directing them to remove the unauthorized mechanical parking and warning them that proceedings under Section 52 of the Maharashtra Regional and Town Planning Act would be initiated in the event of non-compliance. The said notice, read

together with the complaint and inspection reports, prima facie establishes that the Municipal Corporation had initiated lawful proceedings against the alleged unauthorized construction much prior to the occurrence of the incident dated 22.02.2023. The charge-sheet further contains photographs depicting the alleged unauthorized mechanical parking. Though the evidentiary value of those photographs will be examined during trial, they prima facie support the prosecution allegation regarding existence of the disputed construction. The prosecution has also placed on record the reply submitted by accused Kalpesh Kapoorchand Jain to the notice issued by the Municipal Corporation. The defence taken therein is a matter requiring evidence and cannot be adjudicated at this preliminary stage. The statements of the first informant, Junior Engineer Shri Vaibhav Bhaskar Kulthe, Technical Engineer Shri Digvijay Kailas Deore and other municipal officials. Maharashtra Security Force personnel namely Shri Shubham Sharad Patil, Shri Naresh Govind Lilka, Shri Dinkar Pema Chavan and Smt. Nilam Yashwant Bagul substantially corroborate the prosecution version. Those witnesses have consistently stated that they were deputed to provide security during the demolition drive and that the accused persons obstructed the municipal officers, pushed them and prevented them from performing their official duties. The statements of independent witnesses including Shri Mohammed Hussain Moghal, Ibrahim Rakmil Shaikh @ Rafiq Shaikh, C.C.T.V. operator and Shri Yogesh Nivrutti Rajguru also support the prosecution case. The prosecution has further relied

upon CCTV footage seized during investigation. The seizure panchanamas relating to the DVR, hard disk and pen drive disclose that the electronic evidence was seized in the presence of panch witnesses and hash values were generated for preserving its integrity. At this stage, the electronic evidence forms part of the charge-sheet and prima facie supports the prosecution case. The applicants have contended that the subsequent sanction granted by the Municipal Corporation regularizes the mechanical parking. In my considered opinion, such contention pertains to the defence of the accused. Whether any subsequent approval was granted and what legal effect it has upon the prosecution case can only be determined after evidence is adduced during the trial. The applicants have further contended that two FIRs have been registered on the same cause of action. Prima facie, the record reveals that the proceedings under Section 52 of the Maharashtra Regional and Town Planning Act relate to unauthorized construction, whereas the present prosecution concerns the alleged obstruction of public servants while discharging official duties. The ingredients of the two sets of offences are distinct and, therefore, this contention cannot be accepted at this stage. According to the applicants, continuation of both proceedings amounts to double jeopardy. This contention does not merit acceptance at this stage.

6] The learned counsel for the applicants has argued that prosecution under Section 186 of the Indian Penal Code is barred

by Section 195(1)(a)(i) of the Code of Criminal Procedure. Suffice it to observe that even assuming such contention requires consideration at the appropriate stage, the alleged defect concerning one particular offence cannot result in discharge from all the offences when the charge-sheet otherwise discloses prima facie commission of other cognizable offences.

7] The Hon'ble Apex court has consistently held that at the stage of Section 227 of the Code the Court has only to determine whether sufficient grounds exist for proceeding against the accused and whether the material raises grave suspicion. The Court cannot conduct a meticulous appreciation of evidence or hold a mini trial.

8] Applying the aforesaid principles to the facts of the present case, this Court finds that the First Information Report, statements of the informant, municipal officers, engineers, security personnel and independent witnesses, coupled with documentary evidence, statutory notices, photographs and electronic evidence, collectively disclose sufficient material raising grave suspicion regarding the involvement of the applicants in the commission of the alleged offences.

9] At this stage, this Court is not expected to record findings regarding the truthfulness of witnesses or admissibility of documents. Such issues shall be decided only after the parties

adduce evidence during trial.

10] In view of the foregoing discussion, this Court is satisfied that there are sufficient grounds for proceeding against the applicants.

ORDER

The application below Exhibit-12 preferred by accused No.3 Kuldeep Jain alias Kuldeep Rajnikant Gandhi under Section 227 of the Code of Criminal Procedure is rejected.

Thane
Date :12/08/2026

Sd/-
(S.S.Renge)
Addl. Sessions Judge, Thane.