

Order Below Exh.211 in Sessions Case No.26/2017

After going through the contents in the application and say/remarks filed by the Learned APP for the State and material available on record, the following points arise for my determination and I have recorded my findings thereon with reasons thereto which are as follows :

<u>Points</u>	<u>Findings</u>
1. Whether the grounds raised on the part of accused No.73 are to the satisfaction to draw the conclusion that there is no sufficient grounds for proceeding against this accused, therefore, he shall be discharged ?	: No.
2. What order ?	: Application is rejected.

REASONS

2. The accused stand prosecuted for commission of offence p/u/s. 143, 147, 148, 149, 332, 333, 326, 337, 353, 504, 506, 427 and 188 of IPC and u/s. 3 and 4 of Damage to Public Property Act and Section 4/25 of the Indian Arms Act as well as commission of offence p/u/s. 37(1)(3)/135 of the Maharashtra Police Act. It is alleged that on 19/03/2015 the election of Chairman of co-operative Society of Andhali was held. When the process of election was going on, the Election Officer was not present on that day. Therefore, Secretary of society named as Samir Laxman Pise performed the program of election. The accused No.1 Shekhar Bhagwan Gore and the accused No.2

Jaykumar Bhagwan Gore who were leader of the group against each other proceeded towards the place where the members of their group are gathered for the purpose of election. On Takewadi to Andhali road and Andhali to Andhali diversion road respectively along with their vehicles converted from assembly in unlawful assembly and in prosecution of common intention of said assembly i.e. to commit breach of order of Executive Magistrate, Dahiwadi in accordance with the provisions of Section 144 of Code of Criminal Procedure, 1973 as well as notification of District Magistrate dt. 18/03/2014 published in accordance with the provisions of Section 37(1) (3) of the Maharashtra Police Act and they started to abuse the members of opposite groups of each other as well as started to pelt stones upon the groups of each other. The accused persons accompanying with the group leader Jaykumar Bhagwan Gore pelted the bottles having explosive substance towards the direction of group of another accused Shekhar Bhagwan Gore. The police officers who are deputed for the purpose of police Bandobast were appealing all the members of said unlawful assembly to disperse and left the place. In spite of appeal on the part of police authority, the members of unlawful assembly damaged the police jeep No.MH-11/AB-310 of Sub-Divisional Police Officer which was parked on the spot of incident by pelting stones on said jeep as well as pelted stones towards the directions of police office bearers present on the spot for the purpose of police Bandobast. As a result of it, Nilesh Dhananjay Dombe B.No.373 of Dahiwadi police station,

Balasaheb Shivaji Sabale P.H.C. B.No.800 of Mhaswad police station sustained hurt as well as other police officers present on the spot also sustained hurt. The members of an unlawful assembly also used the criminal force as well as assaulted the police officers who were on duty of Police Bandobast with intent to prevent or deter them to discharge their duty as such public servant and voluntarily caused hurts to them. Accordingly, the report was filed and the offence under consideration is registered against all these accused.

3. Accused No. 73 has come with the case that he has not committed any offence as alleged. His name is unnecessarily implicated in this case. His name is not reported in F.I.R. The presence of this accused was not transpired in the investigation. In spite of this, his name is implicated in this case and charge sheet is filed against him.

4. The Ld. Counsel for applicant/accused explained the entire background of the case under consideration. He invited my attention towards the material brought on record on behalf of prosecution along with the charge sheet and submitted that the name of accused No.73 is nowhere inserted in F.I.R. The name of this applicant/accused was given by some of the members of opposite group towards police authority with intent to implicate him in this case. The police authority have unnecessarily inserted the name of this accused. The police officer who is stating the name of this accused is not knowing

the accused. The identification parade was also not arranged in connection of this offence during the course of investigation. In such circumstances, investigating authority has filed charge sheet against this accused without having any material to point out involvement of this accused in offence under consideration. The Ld. counsel added that as there is no material available on record to point out active participation of accused in offence under consideration, he be discharged from this case in accordance with the provisions of Section 227 of Cr.P.C. for the aforesaid reasons.

5. The Ld. APP for State while resisting the application under consideration vehemently submitted that there is active participation of accused in offence under consideration. The accused was member of an unlawful assembly formed on the spot of incident in prosecution of any object of unlawful assembly of the criminal acts as alleged in report were committed by each and every member of an unlawful assembly. The reference of activity of some of the members of an unlawful assembly have come in the statements of witnesses recorded by Investigation Officer. It is not necessary to insert the name of each and every member of an unlawful assembly in report. The name of this accused is transpired in investigation. Considering the nature of allegation and material available on record, it is necessary to consider the evidence which will come on record during trial. At this stage, there is sufficient material available on record for presuming that the accused has

committed an offence triable by this Court. Therefore, the accused is not entitled to seek the relief of discharge. On the contrary, the charge be framed against this accused along with other accused.

6. I have gone through the grounds raised in the application under consideration and material available on record on the background of submissions of Ld. counsel for accused as well as Ld. APP for State. There are specific allegations in report under consideration that the mob was gathered on the spot of incident which was divided into two groups under leadership of Jaykumar Gore and Shekhar Gore respectively. When the election of Chairman was postponed, the mob was turned into unlawful assembly and the members of unlawful assembly started to abuse against each other in prosecution of common object to commit breach of notification issued by Executive Magistrate as well as District Magistrate, a mob started to pelting the stones. They also assaulted the police office bearers who were present on the spot of incident and appealing the members of assembly to disperse from the spot. However, with intent to deter them to discharge their duty as such public servant. They were also assaulted as alleged in the report. Whether accused was present in said mob or not needs to be considered after going through the full fledge evidence which will come on record during trial. At this stage, the material available on record is sufficient to presume that accused was one of the member of said assembly and in prosecution of

common object of said assembly, he has committed all the criminal acts as alleged in report under consideration as there are allegations for an offence u/s. 149 of IPC. Therefore, I do not find substance in application under consideration. The reasons put forth on the part of this accused are not to the satisfaction to discharge him from the offence. Therefore, I answer point No.1 in the negative and proceed to pass the following order.

ORDER

1. Application stands rejected.
2. No order as to costs.

Vaduj.
Dt.09-10-2021.

(R.V.Huddar)
Addl.Sessions Judge,Vaduj.