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

CRIMINAL APPLICATION [APL] NO. 1699 OF 2026

APPLICANT : Nishkarsh S/o Kiran Nimgade,
Aged about 26 years, Occu. Nil,
R/o Ward No.1, Post Nandgaon,
Tq. Pombhurna, Dist. Chandrapur.

VERSUS

NON-APPLICANTS : The State of Maharashtra,
through Police Station Officer,
Police Station, Mul, Tah. Mul,
Dist. Chandrapur.

Mr. Purushottam Patil with Mr. N.A. Waghmare, Mr. Vinay Rathi, and Mr. Yash Ghodichor, Advocates for the applicant.
Mr. H. D. Futane, A.P.P. for the non-applicant/State.

CORAM : M. W. CHANDWANI, J.
Judgment Reserved on : September 22, 2026.
Judgment Pronounced on : October 29, 2026.

JUDGMENT :

1. Heard. **ADMIT.** Taken up for final disposal forthwith by the consent of the learned counsel appearing for the parties.

2. This application filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), seeks quashing of First Information Report (FIR) No. 44/2026 dated 22.01.2026 registered

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with Police Station, Mul, Dist. Chandrapur for the offences punishable under Sections 126(2), 189(2), 190, 191(2) of the Bharatiya Nyaya Sanhita, 2023 (BNS) read with Section 135 of the Maharashtra Police Act, 1951 (the Act of 1951) and Section 7 of the Criminal (Amendment) Act, 1932 (the Act of 1932), consequent charge-sheet No. 54/2026 dated 22.03.2026 wherein Sections 221 and 222 of the BNS, Sections 110 and 117 of the Act of 1951 were added to the crime, and Regular Criminal Case No. 432 of 2026 pending before the Judicial Magistrate, First Class, Mul.

3. The case of the prosecution, in brief, is as under :

i] On 21.01.2026, a pickup vehicle bearing No. MH-34-BZ-3127 which was proceeding from Gondpipri towards Nandgaon, dashed to an electricity pole and turned turtle near Mauza Nandgaon resulting in causing serious injury to one Haridas Vilas Mitpalliwar. The passengers travelling in the said pickup vehicle were also injured. The injured persons were shifted to a hospital at Mul. News of the accident was spread over the nearby areas and the people gathered on the spot expressing their anger towards poor quality of the road. They started protesting for taking action against the errant officials of the Public Works Department (PWD)

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and the contractor who constructed the road. The people gathered on the spot and tried to obstruct the road by tying a rope across it. The police reached the spot and removed the people gathered on the spot.

ii] The allegation is that the people by forming an unlawful assembly tried to obstruct the traffic on a public road. In the said mob of the people, the applicant along with the other co-accused persons was present. Therefore, on the complaint lodged by Police Constable Sunil Kulmethe, the FIR came to be registered against the applicant and the other co-accused persons for the aforesaid offences. After completion of investigation the charge-sheet came to be filed against the applicant and the other co-accused persons.

4. Heard Mr. Purushottam Patil, learned counsel appearing for the applicant and Mr. H.D. Futane, learned A.P.P. appearing for the non-applicant/State. Perused the entire charge-sheet.

5. Mr. Patil, learned counsel appearing for the applicant vehemently submitted that agitating against poor condition of a road and asking to take action against the errant PWD officials and the concerned contractor cannot be said to be an offence. Therefore, the people who gathered on the spot for such agitation

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cannot be said to have formed an unlawful assembly. The learned counsel also stated that no specific role has been attributed to the present applicant, whereby, it can be said that the applicant had participated in an unlawful assembly and caused obstruction to the traffic on road. According to him, even if the allegations in the FIR are taken at its face value, no offence whatsoever as alleged is made out against the applicant. It is also contended by the learned counsel that no prohibitory notification/order duly issued by the Commissioner and the District Magistrate under Section 37 of the Act of 1951 was promulgated so as to attract penalty for contravention of Section 135 of the Act of 1951. No such order or any material to that effect has been produced on record. Therefore, according to him, Section 135 of the Act of 1951 is not applicable to the case at hand. A submission is also made that Section 7 of the Act of 1934 is not attracted to the case in hand. According to him, the prosecution against the applicant is nothing but an abuse of the process of the Court. Therefore, he sought quashing of the FIR and the consequent criminal proceedings against the applicant.

6. *Per contra*, Mr. Futane, learned APP appearing for the State vehemently submitted that the people who gathered on the spot were trying to restrain the passersby/commuters who were

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passing through the said road by tying a rope across it. The applicant and the other co-accused persons were present on the spot at the relevant time. Therefore, they have committed an offence under Section 126 of the BNS causing wrongful restraint and under Section 189 of the BNS by forming an unlawful assembly. According to him, a *prima facie* case is made out against the applicant and therefore, sought rejection of the application.

7. Section 126(1) of the BNS provides definition for wrongful restraint and Section 126(2) provides punishment for wrongful restraint. It reads as under

> *"Section 126 – Wrongful Restraint -*
> *(1) Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.*
> ***Exception:*** *The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.*
> *2. Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both."*

Wrongful restraint means intentionally stopping a person from going in a direction where he has a legal right to go. The above said sections levies penalty for such an act.

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8. Thus, for bringing an accused within the ambit of the act of wrongful restraint the accused must voluntarily have obstructed any person so as to prevent that person from proceeding in any direction in which the said person has a right to proceed. Perusal of the entire charge-sheet does not reveal that the people who gathered on the spot by tying rope across the road obstructed any person from proceeding in any direction through the road. There is no whisper in the entire charge-sheet as to who was obstructed from proceeding from one direction to other direction. Not a single statement of any passerby is recorded whose right of way had been obstructed by the people who gathered on the spot. Therefore, the ingredients of Section 126 of the BNS are not attracted against the applicant.

9. This takes me to Section 189 of the BNS, which defines 'unlawful assembly'. It reads as under :-

> *"**Section 189 – Unlawful Assembly -***
> *(1) An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is --*
> *(a) to overawe by criminal force, or show of criminal force, the Central Government or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or*

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(b) to resist the execution of any law, or of any legal process; or

(c) to commit any mischief or criminal trespass, or other offence; or

(d) by means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

(e) by means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation: *An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.*

(2) Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly and such member shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
(3) …"

An unlawful assembly is a gathering of five or more persons who share a common purpose to commit an offence, resist the law, use criminal force, take someone's property, obstruct a right of way, or compel someone to act against their will. Even a lawful gathering can later become unlawful. A person who knowingly joining or remains in such an assembly can be punished.

10. Thus, for rendering any assembly as an unlawful

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assembly, the prosecution has to show that common object of the persons composing that assembly was to achieve any one of the purposes specified in clauses (a) to (e) of Section 189 of the BNS. For the purpose of this case, the prosecution is relying on clause (c) which provides that the assembly was formed to commit any mischief or criminal trespass or other offence. As stated above, there is nothing on record to suggest as to who was obstructed by the people who gathered on the spot. There is no evidence at all in the entire charge-sheet to that effect. Therefore, it can hardly be said that the offence of forming an unlawful assembly has been committed by the people who gathered on the spot. If that is so, the assemblage of people who gathered on the spot to agitate, however large, cannot be said to be illegal. In order for it to be illegal, the assemblage must be inspired by an illegal object as specified in Section 189 of the BNS. Merely because large number of persons gathered to agitate against the condition of the road and insisting for action against the erring officials of PWD department and the contractor, it cannot be presumed that the people gathered on the spot formed an unlawful assembly.

11. Even if for the sake of argument it is presumed that the

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people who gathered on the spot tried to obstruct the passersby illegally and thereby committed an offence punishable under Section 126 of the BNS, a bare perusal of the FIR reveals that it has two distinct parts.

i] In first part, it has been alleged by the complainant that after receipt of information of the accident, the complainant along with other police staff reached the spot and sent the injured for medical treatment. At that time the people who gathered on the spot were agitating against the poor condition of the road and demanding action against the erring officials of the PWD department and the contractor. Thus, the people gathered on the spot tried to obstruct the commuters from proceeding ahead. The police disbursed the people gathered the road.

ii] In the second part of the FIR it is revealed that thereafter the applicant and the other co-accused persons formed an unlawful assembly and were agitating to take action against erring officials of the PWD department and the contractor. Thus in the first limb of the story in the FIR, there is no mention of the name of the applicant that he was part of the assembly. The name of the applicant surfaced when police removed the people from the road. The people gathered on the spot along with the applicant,

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demanded action against the officials who were responsible for maintaining the road. Thus, there is no evidence to suggest that the applicant was a member of the assembly when the assembly tried to obstruct the commuters to proceed in any direction on the road.

12. So far as the allegation against the applicant that thereafter when the people gathered on the spot the applicant along with the other co-accused persons was agitating for taking action against the errant PWD officers and the contractor responsible for maintaining the road is concerned, it is a settled law that prosecutions must not be launched to stifle agitations that are part of democratic process so long as the people do not take the law into their own hands or indulge in violence or damage to public or private property. Article 19(1)(b) of the Constitution guarantees the right to assemble peaceably and without arms. While reasonable restrictions could always be imposed on exercising this fundamental right, such right must not be diluted or stifled based upon vague charges bereft of the essential ingredients to constitute offences under the penal laws. The lines between the constitutional right to protest and the unleashing of penal prosecutions cannot be allowed to be blurred. If this mindset gains

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traction, it would be a sad day for democracy. ***(See. Mazdoor Kisan Shakti Samghatan V. UOI [(2018) 11 SCR 586])***. Even otherwise, there is no material on record that at the time of restraining the road, the applicant was found to be the member of the said assembly. Later on, the applicant was found with the assembly while agitating, which cannot be termed as an offence. Thus, since the main offence under Sections 126 and 189 of the BNS are not made out, the Sections 190 and 191(2) of the BNS will also be not made out.

13. So far as allegation against the applicant of committing offence under Section 135 of the Act of 1951 is concerned, it prescribes punishment for disobeying an order lawfully made under Section 37, 39 or 40 or abets the disobedience thereof. In order to attract the penalty for contravention of Section 135 of the Act of 1951, it has to be proved that there was an order passed by the Commissioner and the District Magistrate and it has been duly promulgated in a manner provided under the Act of 1951. There is no material on record which suggests existence of any order passed by the Commissioner and the District Magistrate at the relevant time or that it was duly promulgated so that the general public may

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be able to know existence of such an order. Therefore, the ingredients of Section 135 of the Act of 1951 are not attracted in the present case.

14. This takes me to Section 7 of the Act of 1932, which prescribes punishment for molesting another person to the prejudice of their employment or business, causing any person to abstain from doing or to do any act which such person has a right to do or to abstain from doing, obstructs or uses violence to or intimidates such person or any member of his family or person in his employ, or loiters at or near a place where such person or member of employed person resides. There is no such allegation in the present case against the applicant of having committed such an offence. Be that as it may, for the reasons mentioned in the foregoing paras, the ingredients of Section 7 of the Act of 1932 will also not be attracted against the applicant.

15. A reference can be made to the decision of the Supreme Court in the case of ***State of Haryana and others Vs. Bhajan Lal and others***, reported at ***1992 Supp (1) SCC 335*** which reads thus :

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of*

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decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party

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> *(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*"

16. Lastly, so far as Sections 221 and 222 of the BNS and Sections 110 and 117 of the Act of 1951 are concerned, these offences fall under the category of non-cognizable offences. In the present case as the cognizable offences as alleged are not made out, the police could not have investigated into these non-cognizable sections without prior permission of the competent Magistrate as stated in clause (4) of para 102 in the case of ***Bhajan Lal*** (*supra*). Therefore, these sections will also not survive in the present case.

17. For the above said reasons, I find substance in the arguments of the learned counsel for the applicant that even if the allegations in the FIR are taken at its face value, it does not constitute any offence alleged against the applicant. The launch of criminal prosecution against the applicant is nothing but an abuse of the process of the Court. Therefore, in my view, this is a fit case for the exercise of inherent powers under Section 528 of the BNSS to secure the ends of justice and to prevent abuse of the process of the Court. Hence, the following order :

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ORDER

1. The Criminal Application is allowed.

2. First Information Report No. 44/2026 dated 22.01.2026 registered with Police Station, Mul, Dist. Chandrapur for the offences punishable under Sections 126(2), 189(2), 190, 191(2) of the Bharatiya Nyaya Sanhita, 2023 read with Section 135 of the Maharashtra Police Act, 1951 and Section 7 of the Criminal (Amendment) Act, 1932, consequent charge-sheet No. 54/2026 dated 22.03.2026 and Regular Criminal Case No. 432 of 2026 pending before the Judicial Magistrate, First Class, Mul, are quashed and set aside, *qua* the applicant.

3. The application stands disposed of in the above terms.

(M.W.Chandwani, J.)

Diwale

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