



**WWW.LIVELAW.IN**

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Cr Application 2736 of 2019

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

931 CRIMINAL APPLICATION NO.2736 OF 2019  
IN WP/1145/2018 WITH WP/1145/2018 WITH  
APPLN/2625/2018 IN WP/1145/2018

BABU S/O RAGHUNATH PANCHAL @ BABU  
RAGHUNATH LOHAR  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

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Shri. Ajinkya Reddy, Advocate, for applicant.

Smt. V.N. Patil-Jadhav, Additional Public Prosecutor, for respondents.

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**Coram: T.V. NALAWADE &  
R.G. AVACHAT, JJ.**

**Date: 6 SEPTEMBER 2019**

**ORDER:**

1) In Criminal Application No.2736 of 2019 direction is claimed to the respondents to see that the permission is granted to the petitioner to celebrate Moharrum on 10-9-2019 at his home and permission be granted on the basis of application given on 5-8-2019. Both the sides are heard.



2) Learned Additional Public Prosecutor showed the papers of police in which there is a notice issued under section 149 of the Code of Criminal Procedure. In the notice it is informed that the villages and particularly the persons of Muslim community had informed that the festival of Moharrum was not being celebrated in the village for many years. The villagers had informed to police that the person like the present petitioner was celebrating the festival by installing Dola and thereby he was insulting the religion and also the festival of Moharrum. Police refused to allow him to celebrate Moharrum festival by informing that the act may cause insult to belief of others and on the contrary warning is given that action will be taken against him.

3) In view of provisions of Articles 19,25 and 26 of the Constitution of India every citizen in this country has right to propagate and manage the religious affairs. These articles include right to celebrate festivals. This country has great traditions. The persons of one religion participate in religious functions of other religions. In Maharashtra there is a practice that Muslim people

participate in Ganesh festival, Diwali festival etc. and Hindus participate in Moharrum, Eid and like festivals. This practice is irrespective of the belief in a particular religion and this is due to the relations that the citizens have developed with each other. Further, inside of the house, a person of any religion may follow and practice other religion also even if he belongs to particular religion. Most of the persons who visit Ajmer Dargah are Hindus. They offer prayers there. They gift *chaddar* and this is being done even by persons holding higher posts in this country. Many Hindus observe fast in Ramzan month. In most part of Maharashtra both Hindus and Muslims participate in Moharrum.

4) This mixing the persons of different religions need to be increased in a country like India. It is unfortunate that the present petitioner is warned of action if he installs Dola inside of his house and observes Moharrum inside of his house. As already observed a person can follow religious practices of his choice and it cannot harm the feeling of others and it depends on his own belief. The petitioner was not asking permission for

taking procession of Dola after completion of 10 days. These days even the immersion of Ganesh idol is done at the residential place and that we call "eco-friendly Ganesh". Thus, if the petitioner believes that he can follow this practice at his house the authority cannot be allowed to prevent him from following such practice. This Court is of the view that it was not necessary for the petitioner to make such application as he wanted to observe the aforesaid practice at his house. It appears that only due to the fear of the authority he thought it proper to apply and the fear has become true as the warning is appearing in the notice given under section 149 of the Cr.P.C. to the petitioner.

5) In view of these circumstances this Court holds that the application needs to be allowed as he can install Dola inside of his house and celebrate Moharrum inside of this house. He needs to observe the other restrictions like not to beat the drums and not to create noise which may cause disturbance. This permission does not amount to taking of the procession as it will be a private practice and not a public function. For that, the main proceeding is still



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pending. To that extent this Court is observing that the aforesaid show cause notice is to be ignored and to that extent it is to be treated as quashed and set aside. The Criminal Application No.2736 of 2019 is allowed and disposed of. This Court expects the authority to see that the petitioner is not harassed by anybody from the village and if necessary, protection is given to him. Authenticated copy to both the sides is allowed.

Sd/-  
**(R.G. AVACHAT, J.)**

Sd/-  
**(T.V. NALAWADE, J.)**

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