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CRI.WP 548 of 2020 & ORS.

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

CRIMINAL WRIT PETITION NO.548 OF 2020

Konan Kodio Ganstone
and others.

..Petitioners

versus

State of Maharashtra through
Police Station Officer, Jamkhed Police Station
Jamkhed, Tq. Jamkhed, Dist. Ahmednagar

..Respondent

**WITH
CRIMINAL WRIT PETITION NO.554 OF 2020**

Hammd Abdulkadar Banota
and others.

..Petitioners

versus

State of Maharashtra through
Police Station Officer, Newasa Police Station,
Newasa, Tq. Newasa, Dist. Ahmednagar

..Respondent

**WITH
CRIMINAL WRIT PETITION NO.552 OF 2020**

Asalebin Mohammad Noor,
and others

..Petitioners

versus

State of Maharashtra through:
Police Station Officer, Ahmednagar
Camp Police Station, Ahmednagar,
Dist. Ahmednagar

..Respondent

DATE : 27th August, 2020

Per: M.G. Sewlikar, J.

1. I had privilege to read the Judgment of Brother Hon'ble Shri Justice T.V.Nalawade. While pronouncing the Judgment, it was observed that I agree with the operative part of the Judgment but I do not agree with some reasoning and the reasons were reserved. Now, I proceed to give the reasons.

2. The petitioners in Writ Petition Nos.548 of 2020, 552 of 2020 and 554 of 2020 are prosecuted for the offences punishable under Sections 188, 269, 270 and 290 of the Indian Penal Code (IPC), Sections 37(1)(3) r/w. 135 of Maharashtra Police Act, 1951, Section 11 of the Maharashtra Covid-19 Measures and Rules, 2020, Sections 2, 3 and 4 of Epidemic Diseases Act, 1897, Section 14(b) of Foreigners Act, 1946 and Section 51(b) of the Disaster Management Act, 2005.

3. The material placed on record does not show that when the foreign nationals landed in India, they were infected with Covid-19. Similarly, the material placed on record does not show that the foreign nationals violated visa conditions. Visiting religious places does not amount to violating visa conditions. The statements of the witnesses recorded during the investigation do

not show that the foreign nationals were propagating religion. Continuation of prosecution against the petitioners in these circumstances would be an abuse of process of Court. Since none of the offences under the aforesaid Sections are made out, the charge-sheets deserve to be quashed. Therefore, I agree with all the observations of my learned Brother except the observations contained in paragraph No.35. Paragraph No.35 reads as under:

“35) There were protests by taking processions, holding Dharana at many places in India from atleast from prior to January 2020. Most of the persons participated in protest were Muslims. It is their contention that Citizenship Amendment Act, 2019 is discriminatory against the Muslims. They believe that Indian Citizenship will not be granted to Muslim refugees and migrants. They were protesting against National Registration of Citizenship (NRC). There were protests on large scale not only in Delhi, but in the most of the States in India. It can be said that due to the present action taken fear was created in the minds of those Muslims. This action indirectly gave warning to Indian Muslims that action in any form and for any thing can be taken against Muslims. It was indicated that even for keeping contact with Muslims of other countries, action will be taken against them. Thus, there is smell of malice to the action taken against these foreigners and Muslim for their alleged activities. The circumstances like malice is important consideration when relief is claimed of quashing of F.I.R. and the case itself.”

4. I find it difficult to concur with these observations as allegations in this respect are not made in the petitions nor there is any evidence in this regard. Therefore, in my opinion these observations are outside the scope of the petitions.

5. All the petitions are therefore allowed.

6. First Information Reports and the charge-sheets are quashed.

**(M.G.SEWLIKAR)
JUDGE**

SPT