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

CRIMINAL SUO-MOTO PUBLIC INTEREST LITIGATION NO.2 OF 2021
REGISTRAR (JUDICIAL), HIGH COURT OF BOMBAY, BENCH AT
AURANGABAD

VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
CRIMINAL APPLICATION NO.1029 OF 2021
IN CRSMP/2/2021

PRASHANT BANSILAL BAMB
VERSUS
THE REGISTRAR (JUDICIAL) AND OTHERS

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Advocate for the Petitioner : Shri Bora Satyajit S. appointed as Amicus
Curiae.

Chief Public Prosecutor for the Respondents/ State : Shri D.R. Kale

Advocate for Respondent 8 : Shri S.G. Chapalgaonkar

Advocate for Respondent 20 : Shri S.R. Patil

Advocate for Respondent 22 : Shri K.N.Lokhande

Advocate for Respondent 23 : Shri D.M. Shinde

Advocate for Respondent 25 : Shri R.K.Ingole Patil

Advocate for the Applicant/ Intervener : Shri S.S. Thombre

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**CORAM : RAVINDRA V. GHUGE
&
B. U. DEBADWAR, JJ.**

DATE :- 07th May, 2021

Per Court :-

Criminal Application No.1029/2021

1. Shri Thombre, learned advocate submits that this application has been filed by Shri Prashant Bansilal Bamb, serving MLA from Gangapur-Khultabad constituency, to intimate to the court that there was

a public incident wherein, he had to raise his voice since a person, who had tested covid positive and related to him, was in a serious condition and the relative had rushed out of the covid care centre for urgently fetching drinking water and food. He tenders an apology for the same and submits that he is instrumental in establishing a large covid centre in his constituency and also intends to establish an LPG crematorium. Considering the said statement, this Criminal Application is disposed off.

Suo Moto Criminal PIL No.2/2021

2. Shri Suresh Wankhede, Assistant Police Commissioner (Traffic), Aurangabad City, has filed his affidavit dated 06.05.2021 tendering an apology declaring that he has no intention to flout the orders passed by this Court or the Honourable Supreme Court and that he has the highest regard for all the courts and orders passed by them.

3. It was brought to our notice on 06.05.2021 that this officer had issued a press note advising the public at large, in his capacity as ACP (Traffic) Aurangabad city, that those riding two wheelers will have to compulsory wear helmets from 15.05.2021 or 16.05.2021. Apparently, if this is his decision, it would amount to overbearing the authority of the Court as it would be an attempt to ignore the order of this Court dated 26.04.2021.

4. We find from the affidavit filed by Mr.Wankhede that he has

not even whispered about the circular that he has issued, he has not even denied that he had advised the public to defer the implementation of our order or that the newspapers have wrongly quoted him. Except for declaring his respect to the Court, Shri Wankhede has not stated anything about his action which was the focal point. We are, therefore, rejecting this affidavit and we do not treat it as an apology tendered by the said officer. This creates a ground for initiating contempt action against the said officer.

5. The learned Chief Public Prosecutor has shown us a press note dated 04.05.2021 issued by the Mr.Wankhede in which it is stated that the action would be initiated against persons failing to use helmet w.e.f. 05.05.2021.

6. The learned Amicus Curiae has placed before us news reports in which, it has been mentioned that Mr.Wankhede had issued an order for apprising two wheeler users that wearing of helmets would be compulsory from 16.05.2021. It is, therefore, pointed out that a different circular is being shown to the Court to create a picture that Mr.Wankhede had never indicated to any reporter that wearing of helmets would be compulsory from 16.05.2021.

7. In this backdrop, we would expect that the learned Amicus Curiae to place before us, on the next day, any such circular which has been issued by Mr.Wankhede to the press indicating that use of helmets

would be compulsory from 16.05.2021. We, therefore, would deal with this issue on the next date.

8. The copy of the report issued by Smt.Meena Makwana, Deputy Commissioner, Police Head Office, Aurangabad dated 30.04.2021 is marked as "X-1". The report submitted by Shri Jagdish Miniyar, Deputy Commissioner, General Administration, Divisional Commissioner Office, Aurangabad dated 05.05.2021 is marked as "X-2". The report received from Smt.Meena Makwana dated 06.05.2021 is marked as "X-3". The affidavit dated 06.05.2021 tendered by Shri Wankhede is marked as "X-4". A copy of the press note dated 04.05.2021 authored by Shri Wankhede, placed before us, is marked as "X-5". The compilation of newspaper reports (15 pages), consisting of press reports from Times of India, Dainik Lokmat, Dainik Divya Marathi, Dainik Sakal, etc. are collectively marked as "X-6".

9. To clear all doubts, we reiterate our directions issued on 26.04.2021 and in our orders passed thereafter, to make it clear that the wearing of masks covering the nose and mouth and use of helmets is compulsory and there is no relaxation.

10. Having noted the submissions of the learned Amicus Curiae and the learned Chief Public Prosecutor and the learned advocates appearing for the respondents, we find that the problem with the citizens is that they are unable to discipline themselves. With the intention of

avoiding fine or action, masks are worn below the chin and the nose and mouth is kept open. We have seen in the press reports as well as in the electronic media that people appear to take pride in hanging the masks below the chin. Same is the case with helmets, which are hung on the rear side of the motorcycle so as to immediately wear it the moment a traffic police constable is seen by the rider from distance. It is unfortunate that the people have to be advised to protect themselves and at a times, have to be penalized so as to make it compulsory for them to protect themselves as if they have no responsibility towards themselves and their family members. Despite this being a reality, each citizen likes to blame the police and the administration for the rise in the covid-19 patients. It is quite shameful that we are unable to discipline ourselves and we find it very easy to blame the administration for being infected with corona virus due to our own acts. In these premises, we are compelled to pass orders making the use of masks and helmets compulsory as if it is only the Government's duty to protect the citizens and that the citizens owe no duty towards themselves or their family members. We, therefore, observe that the administration which includes the Police Department, shall strictly implement the covid restrictions and ensure that any person found in the public street not wearing a mask, no matter what position he occupies in the society, is penalised. With the same strictness, the use of helmets shall be mandated.

11. The learned Amicus Curiae submits that the press has reported that a former mayor (first citizen of the Aurangabad city) has celebrated his birthday by violating the restrictions. He has placed before us the news item published by daily Divya Marathi, Divya City supplement dated 07.05.2021, which carries the photograph of a former mayor Shri Nandkumar Ghodele, who is being fed with sweetmeats. About 12 persons appear in the picture, out of which, only one person is supposedly wearing a mask below his chin and all rest of them are without masks. We are attaching the said news item as page No.14 to Exhibit X-6. The learned Chief Public Prosecutor submits that an offence has been registered against the persons involved. He also informs that an offence has been registered even against an incumbent MLA Shri Sanjay Shirsath in the MIDC Waluj Police Station bearing Crime No.383/2021. We are surprised that the people's representatives, who are expected to lead from the front and should aspire to become ideal leaders and role models, are taking pride in celebrating Bhoomipujan and their birthdays publicly, by violating covid-19 restrictions.

12. The learned Chief Public Prosecutor submits that even as regards marriages during lock-down restrictions, only two hours have been allotted for the function. Only 25 persons are permitted to attend the marriage inclusive of the bride and the bridegroom and permission is necessary for performing such marriage functions. He is, however,

unaware about such restrictions as regards birthday celebrations of people's representatives, but assures the Court that all lock-down restrictions will be imposed with utmost strictness.

13. Insofar as RTPCR testing and rapid antigen tests are concerned, we find that the residents of far flung villages, on developing symptoms which lead to suspicion of corona infection, rush to the nearest primary health centres (PHCs) or the rural hospitals. RTPCR sample collection centres may be available, however, the said samples have to be transported to a larger city, which has labs to perform the tests. By the time the test result as "positive" is conveyed to the patient via mobile phone and subsequently, physically, almost two days lapse. These two days are crucial for a covid patient insofar as the High Resolution Computed Tomography (HRCT) count and the infection reaching the lungs are concerned. These two days could turn out to be fatal for some patients. We are, therefore, directing all the respondents to increase rapid antigen tests at the PHCs and Rural hospitals so that the test results which are available within 30 minutes on the spot, could be conveyed to the patient and a rapid antigen positive patient could be immediately shifted to a covid facility for treatment as this would save his life.

14. The learned advocate appearing for the Ahmednagar Municipal Corporation submits a reply affidavit dated 06.05.2021 filed by the Medical Officer to state that there are two electric crematoriums,

which are functional at Nalegaon Amardham. The Municipal Corporation intends to erect one more electric as well as LPG crematoriums at Savedi sites through financial support from philanthropists/ CSR funds of industries/ municipal funds. We appreciate these steps taken by the Ahmednagar Municipal Corporation.

15. Insofar as LPG crematoriums are concerned, the learned Chief Public Prosecutor submits an encouraging information that, by the end of May, 2021, LPG crematoriums would be established at several places. We are, therefore, directing all the respondents to take the initiative to invite philanthropists, industrialists, people's representatives, NGOs, etc. to come forward for contributing towards the establishment of LPG crematoriums. So also, the District Collectors would consider the utilization of the District Planning and Development Council Funds (DPDC funds) for such purposes. The people's representatives, who have constituency development funds, are also expected to establish LPG crematoriums in their constituencies as ultimately, the public at large would be benefited.

16. Considering that the PIL hearings, especially in relation to covid matters and other urgent issues, can be held even in the vacation period, we are listing this matter on 12.05.2021 (Wednesday) at 11:00 AM.