

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3183 OF 2014

Manchakrao s/o. Madhavrao Malve **....Applicant.**

Versus

Rajendra s/o. Tulshiram Marke and Anr. **....Respondents.**

Mr. D.B. Pawar, Advocate for applicant.

Mr. Satej Jadhav, Advocate for respondent No. 1.

Mr. A.V. Deshmukh, APP for State.

CORAM : T.V. NALAWADE, J.

DATED : 5th January, 2015.

ORDER :

1. The application is filed for cancellation of relief of anticipatory bail granted in Criminal Mis. Application No. 115/2014 by the learned Additional Sessions Judge, Gangakhed.

2. This Court has perused the papers of investigation. The crime is registered on the basis of report given by one Manchakrao. He has made allegations that respondent No. 1 had approached him for purchasing the two sandalwood trees standing in his field and negotiations were going on. The

negotiations failed. He has made allegations that the two trees were cut on the night between 21.3.2014 and 22.3.2014 and the wood was taken away and that way, the theft was committed. He has made allegations that present respondent/accused had given threat to take away the trees as the complainant was not ready to sell it. The report was given immediately, on 22.3.2014 and the crime came to be registered for offence punishable under sections 379, 34 of I.P.C.

3. This Court has gone through the order made by the learned Additional Sessions Judge. When there was panchanama prepared by police showing that there were two sandalwood trees in the field and there were the branches and other parts of the trees which remained there after cutting of the two trees and when panchanama shows that when there were many small sandalwood trees standing in the field, the learned Additional Sessions Judge ought to have given due weight to this circumstance and the allegations made in the report. It appears that the learned Additional Sessions Judge has given much weight to 7/12 extract. It is observed that no entry was made in respect of the sandalwood trees in 7/12 extract and so, the accused was granted anticipatory bail.

4. When there is theft case and when there is no direct evidence, the only evidence will be that of recovery. If relief of anticipatory bail is granted in such a case, there will be virtually nothing left in the case which can be filed against the persons, who are named in the F.I.R. Custodial interrogation is must in the case. The incidents of theft of sandalwood trees are increasing day by day. In such cases thorough investigation is required and the circumstance that chargesheet is filed cannot help the accused to show that police should not need the custody of the accused. Police become helpless, if relief of anticipatory bail is granted in favour of accused in such case and they are virtually prevented from making any investigation of the case. There was no effective investigation due to the order of anticipatory bail. This Court holds that the order needs to be set aside.

5. In the result, the application is allowed. The order made by the learned Additional Sessions Judge is hereby set aside. The relief of anticipatory bail is cancelled. The respondent No. 1 is to be committed to the custody. Liberty is given to approach the learned J.M.F.C. for police custody remand.

[T.V. NALAWADE, J.]