

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

CRIMINAL APPLICATION NO.4132 OF 2015

1. Vyankatrao s/o Sampat Paithane,
Age 65 years, Occu. Labour
2. Dilip s/o Vyankatrao Paithane,
Age 30 years, Occu. Labour

Both r/o Kumbharzari,
Taluka Jafrabad, Dist. Jalna

.. Applicants

Versus

- . The State of Maharashtra,
Through Investigation Officer,
Police Station, Tembhurni,
Taluka Jafrabad, Dist. Jalna

..Respondent

Mr R.J. Nirmal, Advocate for applicants
Mrs M.A. Deshpande, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 20th August 2015

PER COURT

1. Pursuant to the complaint dated 8th June 2015, offence punishable under Section 379 read with Section 34 of the Indian Penal Code is registered against the present applicants in which they are seeking pre-arrest bail.

2. It is the case of the applicants that already there exists a civil dispute to which a decree for injunction is operating in favour of present applicants, which was passed on 11th January 2005, by the learned 2nd Ad hoc Additional District Judge, Jalna in Regular Civil Appeal No.20 of 2002 whereby the suit of the applicants came to be decreed and the defendants/complainants were permanently restrained from disturbing the possession of the present applicants over the suit land.

3. Perusal of the F.I.R. reflects that on 7th June 2015, at around 3.00 pm, it is alleged that the applicants have stolen five pipes which were used for irrigation from the field of the complainant.
4. Learned Assistant Public Prosecutor has opposed the bail on the ground that the eye witness to the incident, viz. Raju Phulsing Kewat has stated that he was witness to the alleged incident of theft.
5. It is required to be noted here that the existence of a civil dispute, a decree in favour of the present applicants in addition to the acquittal of the applicants in Sessions trial No.132 of 1995 which was initiated at the behest of one of the witnesses Deelip Vyankatrao Paithane, it will be appropriate, in my opinion to grant pre-arrest bail to the applicants.
6. In view thereof, I propose to pass the following order :
 - (I) Applicant No.1 Vyankatrao s/o Sampat Paithane and applicant No.2 Dilip s/o Vyankatrao Paithane, in the event of their arrest, be released on bail, in connection with Crime No.43 of 2015, for the offence punishable under Section 379 r/w Section 34 of the Indian Penal Code, registered with Tembhurni Police Station, District Jalna, on executing P.R. Bond of Rs.5,000/- with one solvent surety in the like amount by both of them.
7. Criminal Application stands allowed accordingly.

(N.W. SAMBRE, J.)