

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.478 OF 2015**

Sou. Pratibha Dilip Bachhav
Versus
State of Maharashtra

....Applicant.

...Respondent.

Mr. Manoj S. Mohite with Mr. Chetan S. Damre i/by Omkar Gopal Nagwekar, advocates for the Applicant.
Mrs. G.P.Mulekar, APP for the respondent-State.

CORAM : MRS. MRIDULA BHATKAR, J.

DATED : April 13, 2015.

P.C.:

Applicant-accused has moved this Court under Section 438 of the Criminal Procedure Code as she is prosecuted for the offences punishable under Sections 26(1)(a), (d), (h), 52(2), 63(C), 26(1)(a), (h) of the Indian Forest Act, 1927, under Section 2 of the Forest Conservation Act, 1980, under Sections 109, 120B, 194, 199, 200, 201, 420, 441, 452, 468, 471, 477A of the IPC, breach of the provisions of Biological Diversity Act, 2002 and under Section 2(c) of the Contempt of Courts Act, 1973.

2 The learned counsel for the applicant-accused submits that offence is registered on 12.10.2014 at C.R.No.2 of 2014 by forest officer

and the principal accused husband is already arrested and is still in the custody. Applicant-accused is made accused on 9.3.2015.

3 It is the case of the prosecution that land belongs to forest department is illegally acquired by the applicant-accused and her husband, who is Sectional Engineer in P.W.D. Department at Nashik. It is the case of the prosecution that during 12.10.2014 to 19.11.2014, husband of the applicant-accused has erased all the trees in the forest to clear the land for the purpose of cultivation for other purposes and so also has damaged the forest property of the Government and committed offences under Sections 26(1)(a)(d)(h) and under Section 63 (c) of the Indian Forest Act. It is the case of the prosecution that forest land , which is not transferable as per the Government Resolution of 29th July, 1908 has been illegally transferred in the name of the applicant-accused through will of one Sundarabai Hiralal Nikam and, therefore, she is also prosecuted along with her husband for the offences of forgery, cheating and abetment to the same and other sections of the IPC. So also she is charged with Section 201 as the trees of Neem, Babul and Amla are taken away with the help of JCB machine, which is the property of the forest.

4 The learned counsel for the applicant-accused has submitted

that the applicant-accused is innocent. She has not committed any offence. He challenged the authority of the forest officer to investigate the offences under the IPC and he pointed out that the forest officer has no power to file report under Section 173 of the IPC as the procedure laid down under Sections 64,65 and 66 of the Indian Forest Act is not complied with. He submitted that husband of the applicant-accused has committed offence though the land stands on her name. Husband is inside prison since three months and she is to be granted bail. She is ready to co-operate with the police and her custodial interrogation is not required.

5 The learned prosecutor relied upon the report submitted by the Investigating Officer giving details as to how the role played by the applicant-accused and her involvement in the offence under the Forest Act. It is further told that this lady was absconding throughout. Though her statement is recorded on 9.4.2015, she is not co-operating to produce original allotment letter. She relied upon the letter dated 17.3.2015 given by Tehsildar, Baglan disclosing that the Government Resolution under which land as claimed to be distributed is not available in the office at Baglan.

6 On hearing the learned counsel for the applicant-accused and the learned prosecutor, it appears that whether the forest officer has power to file report under Section 173 of the Cr.P.C. However, at this

stage, this Court will not go into that. Under the Forest Act, forest officer has power to take cognizance of the offence committed under the Forest Act and has a power to arrest and produce before the Magistrate. Today officer is concerned with the arrest of the applicant-accused. It appears prima-facie that the land stands in the name of the applicant-accused. There are many documents showing that the applicant-accused applied for mutation, housing loan and measurement of the land on behalf of Hiralal Nikam, who is no more as he expired in 2008 as the land stands in her name and trees standing in her name were erased with the help of JCB and accordingly, offences are registered against her and her husband. Prima-facie, it shows that the applicant-accused has involvement in the offence. However, it appears that when the report was made to the forest officer, it was made against her husband and not against her and, therefore, I am inclined to confirm anticipatory bail granted by this Court on the same bonds and sureties. However, the applicant-accused is hereby directed to attend Satana Range Forest Officer twice in a week on every Monday and Wednesday till 31.5.2015 from 10 am to 12 noon without fail and co-operate in interrogation.

7 Applications stands disposed of.

(MRS.MRIDULA BHATKAR, J.)