

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.501 OF 2015

Shivaji Satish Gaikwad

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.S.S. Chaudhari for the Applicant

Mr.D.P. Adsule, APP, for Respondent – State

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **APRIL 27, 2015**

P.C.:

1. This application is moved for pre-arrest bail as the applicant/accused is facing charges under section 379 r/w 34 of the Indian Penal Code. The offence is registered at the instance of one Shivaji Birajdar, Talathi of Bandgaon, Taluka Indpaur, Pune at C.R. No.34 of 2015 at Indapur police station on 24.1.2015. The offence of theft has taken place on 6.1.2015. It was a theft of sand, which was excavated by the applicant/accused alongwith the 3 co-accused.

2. The learned Counsel for the applicant/accused has submitted that the co-accused Rajendra Gaikwad was granted pre-arrest bail by this Court's order dated 17.3.2015 in Anticipatory Bail Application No.351 of 2015 and on parity, he prays for pre-arrest bail. He also prays that the

interim relief granted by this Court be confirmed. He further submitted that the sand which was stored after panchanama, was found missing 2 to 3 days after 6.1.2015, however, the complaint was lodged on 24.1.2015 i.e., nearly 15 to 16 days after the Talathi noticed that the sand was taken away.

3. Learned Prosecutor submitted that the stock which was made under panchanama, was stolen by the applicant/accused and the co-accused. He submitted a report of the police that as per the terms and conditions of the order dated 8.4.2015, the applicant/accused was supposed to attend the police station on every Tuesday and Thursday between 4 pm to 6 pm till further orders. However, he did not attend the police station and did not cooperate. On this count alone, he submits, the application for pre-arrest bail be rejected.

4. Perused the order passed by this Court on 17.3.2015. In the said matter, a specific statement was made on instructions that the sand stolen was recovered by the police from the applicant/accused. A total 309 brass sand was seized from the premises under panchanama. The applicant/accused Rajendra Gaikwad in Anticipatory Bail Application No.351 of 2015 has allegedly stolen 4 brass out of 309 brass sand and the said sand was recovered and, therefore, he was granted pre-arrest bail. In the present case, there is no recovery of sand which was stolen by the

applicant/accused. Therefore, this case cannot be considered on parity. Secondly, he has breached the conditions imposed by this Court of attendance. As per the submissions of the learned Counsel for the applicant/accused, he has excavated 37 brass sand. Considering this, it is necessary for the Investigating machinery to recover the sand which is stolen by him.

5. It is noted that the Investigating Officer has not remained present before the Court and has not sent a proper report bifurcating how much sand was excavated and stolen by each of the accused. It is necessary for the Investigating Officer to investigate properly and give a break-up of each accused in respect of stolen sand.

6. In view of the above, the Anticipatory Bail Application is rejected.

(MRS.MRIDULA BHATKAR, J.)