

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.966 OF 2015

Mubin Parkar

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.A.H. Solkar i/b Misbaah Solkar for the Applicant

Ms.Veera Shinde, APP, for Respondent – State

Mr.R.P. Bhonkar, PSI, Shriwardhan police station, Raigad – present

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

DATE: **AUGUST 5, 2015**

P.C.:

1. The application is moved for anticipatory bail under section 438 of the Criminal Procedure Code as the applicants/accused are apprehending arrest in C.R. No.20 of 2015 for the offences punishable under sections 353, 332, 401, 379, 224, 143, 147, 504, 506 of the Indian Penal Code and also section 15 of the Environment Protection Act, 1986. One police officer Mr.Dhondga is the informant that on 21.5.2015, the police received information that at the bank of Karivane creek, some sand was being excavated by suction pump. Therefore, they reached near the creek of Karivane. At that time, they found that the sand was stolen with the help of suction pump and the sand was filled up in two boats as the persons who were working there starting running away after seeing the police.

They chased those persons and took the accused persons, namely, Anwar Kalandar Savel, Mannan Rehman Sheikh, Sarfaraj Ibrahim Jahaju Radhik Usman Fakar and Sanahun Iskar Ali Sheikh alongwith one Narsingh Arjun Pomale, in custody. At that time, the applicant/accused No.1 Mubin Parkar i.e., the owner of the said boats arrived there with 10 to 12 persons and questioned the authority of the police and further asked the six persons, who were taken in custody by the police, to run away. So they all ran away. Thereafter the police seized one boat, half filled with the sand. Hence, the offence is registered.

2. The learned Counsel for the applicants/accused submitted that the applicants/accused are falsely implicated in this case. He relied on the photographs and submitted that no such incident of excavation of sand has taken place at the Karivane creek and the police have falsely implicated the applicant/accused and other persons. There are no antecedents against the applicant Nos.2 to 6.

3. Learned Prosecutor has opposed the application. She relied on the complaint and the statements of other witnesses, seizure panchanama of the sand and the boat and also the suction pump. She submitted that the two cases are registered against the applicants/accused and hence, they are likely to commit the same offence and hence, their custody is required.

4. Perused the FIR, the statements of the witnesses and panchanama. It appears prima facie that the offence is committed in the manner in which it is mentioned in the complaint. The applicant/accused Nos.3, 4 and 5, who were taken in custody by the police on the spot, however, ran away at the instance of applicant/accused No.1. There are no criminal antecedents against these applicants/accused. Considering this, I am inclined to grant pre-arrest bail to only applicants/accused Nos.2, 3, 4, 5 and 6. However, I am not inclined to grant pre-arrest bail to the applicant/accused No.1 i.e., Mubin Hasan Parkar, since he has instigated the others to run away from the police and he physically prohibited the police when they were performing their duty and thus, he is facing charges under sections 353 and 379 of the Indian Penal Code. Further, there are two cases registered viz., C.R. Nos.6 of 2009 and 5 of 2011 which are pending against him for offences of similar nature.

5. In this view of the matter, I am not inclined to grant pre-arrest bail to the applicant/accused No.1 and accordingly, the Anticipatory Bail Application is rejected *qua* the applicant/accused No.1 Mubin Hasan Parkar. However, the Anticipatory Bail Application is allowed *qua* the applicants/accused Nos.2, 3, 4, 5 and 6 on the following conditions:

- i) In the event of arrest, the applicants/accused Nos.2, 3, 4, 5 and 6, namely, Amjad Ibrahim Dangankar, Anwar Kalandar Savel, Sarfaraj Ibrahim Zhanju, Radik @ Sharif Usman Fakar and Narsingh Arjun Pomale, shall be released on bail upon furnishing P.R. Bond in the sum of Rs.20,000/- each, with one or two sureties in the like amount;
 - ii) The said applicants/accused shall not tamper with the evidence or pressurise the witnesses;
 - iii) The said applicants shall not indulge into any kind of offence while on bail;
 - iv) The applicants shall cooperate with the Investigating Officer and attend the concerned police station on every Saturday, between 11 am to 1 pm, till a period of six weeks from today.
6. Anticipatory Bail Application is disposed of on the above terms.

(MRS.MRIDULA BHATKAR, J.)