

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1026 OF 2015

Snehal Vitthal Shirsawade

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.V.R. Gaikwad for the Applicant

Ms.Veera Shinde, APP, for Respondent – State

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

DATE: **AUGUST 7, 2015**

P.C.:

1. The application is moved for pre-arrest bail as the applicant is facing charges under section 379 of the Indian Penal Code and under sections 26(1)(a), (d), (e), (l), (f), (g), (h) and under sections 26 1a, (i), (ii) and b(i) of the Indian Forest Act (Amendment), 1927. It is the case of the prosecution that one Rajjaq Sayyad, Forest Guard noticed on 13.6.2015 at around 10 am that one Pokland machine and one dumper were proceeding towards percolation tank. Therefore, the information was given to his superior officer who arrived there. At that time, one Fortunner vehicle was also found. They found that with the help of the Pokland machine and the dumper, mud was removed from the percolation tank without permission. Therefore, they raided the spot and the machines alongwith the vehicle were seized by the police. The offence was registered against the applicant/accused. The Investigating Officer found that the applicant/accused had hired these machines from on Nandu Gadge and one Deepak.

2. The learned Counsel for the applicant/accused submitted that the applicant/accused was given permission dated 6.5.2015 from Gram Panchayat, Wathar for excavation of the mud from the percolation tank and therefore he was wanted to do the said work. However, he was not involved in the said offence. The machine does not belong to him. He pointed out the permission given by the Deputy Conservator of Forests dated 22.4.2015 giving permission to the forest officer, Koregaon in respect of excavation of the mud sand. He submitted that the applicant/accused is innocent and he has not committed any offence under the Forest Act, till today .

3. Learned Prosecutor has opposed the application. She submitted that the applicant/accused was doing this act without any authority. She further submitted that the Gram Panchayat, Wathar, has no authority to give such permission to excavate the mud sand from the percolation tank. Moreover, as per the order of the Deputy Conservator of Forests, this excavation ought to have been done under the supervision of the Forest Officer which was not done. She further submitted that as per the statements recorded by the owners of the machines, the applicant/accused has hired these machines and the car and therefore no pre-arrest bail is to be granted.

4. Perused the FIR, the permission given by the Gram Panchayat, Wathar so also the permission given by the Deputy Conservator of Forests to the Forest Officer. It appears prima facie that such permission was granted by the Deputy Conservator of Forest Officer that under his supervision the work of excavation of mud sand was to be carried out. However, there is also permission given by the Gram Panchayat, Wathar appointing the applicant/accused for this work. It is also true that the Gram Panchayat, Wathar prima facie appears ought to have carried out this work under the supervision of the forest officer. However, the applicant/accused might have carried out this activity under the impression that he is authorised to do that. The value of the seized mud sand, on query, is of Rs.3,000/-. It was seized and nothing was stolen from the spot. All the machines and the car are also seized. On query, no antecedents are found to the record of the applicant/accused.

5. In these circumstances, I confirm the interim bail dated 24th July, 2015 on the same terms and conditions except that the applicant/accused shall attend the concerned police station till filing of chargesheet.

6. Anticipatory Bail Application is disposed of accordingly.

(MRS.MRIDULA BHATKAR, J.)