

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [ABA] No.675 of 2014

(Moh. Shohel s/o Moh. Arif Khanani

vs.

The State of Maharashtra, through P.S.O. Gadchiroli)

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Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

CORAM : PRASANNA B. VARALE, J.

DATE : JANUARY 28, 2015.

Heard Mr. J.B. Kasat, the learned Counsel for the applicant.

The applicant is before this Court apprehending his arrest in connection with Crime No.129/2014 registered at Gadchiroli Police Station for the offences punishable under Sections 420, 465, 467, 468, 471, 472 read with Section 34 of the Indian Penal Code.

While issuing notice, this Court, on the submission of the learned Counsel for the applicant that the applicant is an employee of accused Ejaj Khan and Ejaj Khan was protected by grant of anticipatory bail, granted *ad interim* protection to the applicant.

The learned Counsel for the applicant submits that report dated 18/10/2014 was lodged on the allegation of one Bharat Joshi that Ejaj Khan by fabricated documents obtained

the permit for lifting the sand. He further submits that the applicant had approached the learned Sessions Judge with a prayer of pre-arrest bail and though the learned Sessions Judge observed that Ejaj Khan purchased the lease rights and the applicant was an employee of Ejaj Khan, on the allegation that the passes were fabricated and those were issued by the applicant, rejected the application. He further submits that on the stand taken by Ejaj Khan that he had employed persons including the applicant and he had not even visited the spot, as the applicant was looking after the affairs being Manager, the application of the main accused Ejaj Khan is allowed. He further submits that on considering the material against the applicant, the applicant is on better footing than Ejaj Khan. He then submits that the applicant had cooperated the investigating agency by complying with the conditions imposed upon him and he is also ready to cooperate with the investigating agency in future. He submits that in such a situation, the custodial interrogation of the applicant is not necessary.

Mr. S.B. Ahirkar, the learned A.P.P. vehemently opposes the application. The learned A.P.P. has made available the material collected by the investigating agency. He also heavily relied on the reply filed by the State. He submits that Ejaj Khan Pathan, who is a contractor of the sand ghat, is a petty cycle shop owner at Umred and the ghat is actually managed by

the applicant, whereas Ejaj Khan is a nominal contractor. He submits that for a span of nearly 6-7 years i.e. from January, 2014 to August, 2014, the activities of illegal transportation of sand were going on by evading the royalty. He submits that the applicant collected the transport permit from the Office of the Collector and then printed bogus T.P. Books thereby lifting of sand and illegal transportation was carried. The learned A.P.P. further submits that to lead the investigating agency in further process of investigation, the custodial interrogation of the applicant would be necessary.

On perusal of the order passed by the learned Additional Sessions Judge, Gadchiroli allowing the application of Ejaj Khan reveals that Ejaj Khan took a stand that he purchased the lease rights of sand lifting and sold sand to various persons and the applicant was employed by him as a Manager. The applicant-Ejaj Khan took a bold stand before the learned Sessions Judge and submitted that he never visited the spot and it is the Manager i.e. the applicant before this Court, who was looking after the affairs and, therefore, the application was allowed. The perusal of the material shows that Ejaj Khan tendered for auction of sand ghat for the year 2013-14 in Gadchiroli District and in response to that Ejaj Khan submitted his offer. His bid being the highest i.e. Rs.11.53 lacs, the offer of Ejaj Khan was accepted and Ejaj Khan deposited the upset price

with the Office of the Collector to the tune of Rs.2,88,250/-. The sand ghat was handed over for lifting the sand on 24th of January, 2014. The copy of the agreement reveals that Ejaj Khan agreed the terms. The documents submitted to the authorities, namely Adhar Card, PAN Card, stand in the name of Ejaj Khan. The Certificate of Registration also stands in the name of Ejaj Khan. All the monthly returns submitted to the Mining Officer are signed by Ejaj Khan. The material collected by the investigating agency shows nearly 40 transport passes allegedly fabricated are seized. The District Mining Officer is also informed through communication and the assistance of the Mining Officer is sought in the process of investigation.

It is interesting to note that the investigating agency collected the material wherein it reveals that there were many complaints received of mischief being played in lifting of the sand. For the reasons best known to the authorities, either dealing with the mining affairs or the district administration, no steps were taken for enquiry in those complaints.

Considering the material placed on record, there is merit in the submission of the learned Counsel for the applicant that the applicant stands on a better footing than Ejaj Khan, whose application is allowed and the protection in the nature of pre-arrest bail is granted in favour of the accused Ejaj Khan. Though it is submitted in the reply filed by the State and though

the learned A.P.P. vehemently opposes the application submitting that the applicant is the string puller, the bulky material collected by the investigating agency so far falls short to show at least *prima facie* connection of the applicant in all the material affairs, namely submitting tender, depositing the earnest amount, approaching the Office of the Mining Officer and other administrative offices etc. The material collected by the agency shows that the applicant was employee engaged by Ejaj Khan.

Thus, considering the material, in my opinion, the learned Counsel for the applicant has made out a case. The apprehension of the State can be taken care of by imposing the conditions on the applicant so as to cooperate the investigating agency.

In the result, the application is allowed. The interim protection granted to the applicant by order of this Court dated 30/12/2014 is confirmed with conditions that the applicant to attend Gadchiroli Police Station on every Sunday of the month between 09:00 a.m. to 12:00 p.m. and maintain a dairy of his attendance duly countersigned by the Police Station Officer till filing of the Charge-sheet.

The application is disposed of as such.

JUDGE