

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 4810 of 2016

District : Jalgaon

Mukund s/o. Balvirsinh Thakur,
Age : 50 years,
Occupation : Business and Editor,
R/o. Shivani Estate Brokers
and Developers,
Shop No.10, 12, 'B' Wing,
3rd Floor, Old B.J. Market,
Jalgaon,
Taluka & District : Jalgaon. .. Applicant.

versus

The State of Maharashtra,
Through City Police Station,
Jalgaon,
Taluka & District : Jalgaon. .. Respondent.

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Mr. Vijay B. Patil, Advocate, for the applicant.

*Mrs. V.N. Patil (Jadhav), Addl. Public Prosecutor,
for the respondent.*

*Mr. Sudarshan J. Salunke, Advocate, for the
applicant in Cri. Application No. 4903 of 2016
(seeking permission to assist APP).*

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CORAM : A.M. BADAR, J.

DATE : 30TH SEPTEMBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 90/2016

registered with Jalgaon City Police Station, Jalgaon, for offences punishable under Sections 307, 353, 332, 504, 506, 109, 420, 379, read with Section 34 of the Indian Penal Code and under Sections 32/177 & 184 of the Motor Vehicles Act, by this application under Section 438 of the Code of Criminal Procedure, is seeking pre-arrest bail.

2. Heard the learned Counsel appearing for the applicant / accused. By taking me through the documents annexed to the application, the learned Counsel for the applicant argued that the applicant is successful bidder for three Sand Ghats and accordingly the Collector has approved auctions of three Sand Ghats in favour of the present applicant. The learned Counsel drew my attention to the complaint dated 09.06.2016 lodged by the present applicant to the revenue authorities stating that receipts are being misused by unscrupulous elements and submitted that by an order dated 13.06.2016, the Addl. Collector had ordered enquiry into the complaint lodged by the present applicant. The learned Counsel further argued that the present applicant is not the owner of the dumper accosted by the Police personnel nor he was present on the spot of the incident. He was present somewhere else. Therefore, Section 307 of the IPC is not attracted. The applicant was not even a person who assaulted the Police personnel at the time of the incident.

3. By drawing my attention to terms and conditions of allotment of sand spots, the learned Counsel for the applicant submitted that as per Condition No.7, the contractor has to submit weekly report as well as monthly description as well as progress report to the concerned Tahsildar for onward transmission to the Collector. The learned Counsel submitted that accordingly the applicant is regularly submitting this information to the revenue officer. It is further argued that as per general terms and conditions of allotment of Sand Ghats, the successful contractor is required to install CCTV cameras on the entry and exit point of sand spot as per general condition No.A. The registration number of the vehicle entries for loading the sand is seen from the CCTV footage. So also exit of the vehicle is also seen in the CCTV footage. That footage, according to the learned Counsel for the applicant, is required to be submitted to the office of Collector, Sub-Divisional Officer as well as Tahsildar in each week. The learned Counsel argued that as yet, no action is taken against the present applicant by revenue officers, which shows that he has no complicity in the crime in question. The learned Counsel further argued that even CCTV footage goes to show that the truck in question never entered in the Sand Ghat allotted to the present applicant.

4. The learned Counsel for the applicant further drew my attention to the document which he described as receipt annexed at page 108 to the application. The learned Counsel submitted that this was the receipt issued by the applicant / contractor for transport of the minor mineral. With this, the learned Counsel submitted that even complicity of the applicant for offences punishable under Sections 420 and 379 of the IPC is not prima facie seen and therefore custodial interrogation of the present applicant is not at all warranted.

5. As against this, the learned Addl. Public Prosecutor argued that during investigation, the Investigation Officer had interrogated driver of the dumper accosted by the Police personnel. Similarly, owner of that vehicle, namely, Ajay Bade was also interrogated. From interrogation of the co-accused, it was found that the sand was loaded from the sand spot allotted to the present applicant and it was being transported without a transit pass. The learned Addl. Public Prosecutor drew my attention to the transit pass which is addressed as receipt by the learned Counsel for the applicant and submitted that this transit pass is not bearing the invoice number. The learned Addl. Public Prosecutor further pointed out that the seized transit pass and transit pass produced on record are visibly different.

6. I have carefully considered rival submissions as well as examined papers of investigation. The crime in question is registered on the basis of report lodged by Anil s/o. Rajaram Tayade, a Police personnel on 15.06.2016. He reported that on that day, he was on duty at Shivajinagar Square at Jalgaon along with Head Constable Shakur Shaikh. At about 06.15 p.m., they noticed a dumper coming towards Tower Square of Jalgaon, loaded with sand. It was driven in rash and negligent manner and therefore according to the informant, he signaled that dumper to stop. However, driver of that dumper drove it on person of the informant and then took that dumper towards the bridge. The informant reported that one unknown person of age group 50 - 55 was following that dumper on vehicle. That unknown person then abused and threatened informant Anil Tayade and virtually lifted him and threw him away. The informant further reported that then he as well as Head Constable Shakur Shaikh chased and accosted that dumper. Driver of the dumper was arrested on the spot. The informant further reported that co-accused Ajay Bade, owner of the dumper, came on the spot and started abusing them as to why they had stopped the dumper. The informant averred that driver of the dumper told them that present applicant Mukund Thakur, who is contractor of the sand spot, had asked him not to stop the dumper even if Police personnel signals for

it.

7. On the basis of this report lodged by informant Anil Tayade, the crime in question is registered. During the course of investigation, Shahrukh Rahman Shikalighar, driver of the dumper and Ajay Bade, owner of the dumper were interrogated. Investigation from them transpired that the dumper was loaded from Girna river sand spot allotted to the present applicant and the transit pass which is commonly known as 'receipt' was delivered to Ajay Bade by the present applicant. That receipt / transit pass came to be seized by the investigator.

8. At this juncture, it is apposite to note that the present applicant is relying on the transit pass / receipt bearing Serial No. 193 which is annexed to the present applicant at Exhibit "N" (page 108). Necessary pleadings can be found in the body of the application in Ground IV. Relevant pleadings read as under :-

" That, so far as the alleged complaint in respect of receipt No.193, it is submitted that the said receipt was already issued by the present applicant to the vehicle bearing R.T.O. Registration No. MH-19/2847 namely Pintu Koli owner of the vehicle on

25.05.2016. Hereto annexed and marked as Exhibit "N" is the copy of the receipt No.193 dated 25.05.2016. That therefore, the applicant had already issued the receipt No.193 on 25.05.2016 and in view of terms and conditions, the record of the receipt had also verified because it is mandate that the applicant to submit the record of the receipt within 15 days."

9. The applicant as such is trying to point out that this receipt bearing No.193 was issued by him on 25.05.2016 to the driver named Pintu Koli of vehicle registration No. MH-19/2847. The accosted dumber was bearing registration No. MH-19/BM-9090.

10. At this juncture, it is relevant to note conditions for allotment of sand spot relied by the present applicant. Condition Nos.28 and 29 are dealing with issuance of transit pass authorizing transportation of minor mineral. It is seen that issuance of transit passes is governed by system named as "Shaurya system". The contractor is required to register his three cellphone numbers with the authorities as per Condition No.28. As per Condition No.29, for transporting the excavated minor mineral, the contractor is supposed to obtain invoice number by sending SMS through the registered mobile

number to the authorities. Then he is required to mention that invoice number on transit pass / receipt along with other particulars such as number of the sand spot, registration number of the vehicle, place or destination of the vehicle, etc. Condition No.29 specifically mentions that transit passes used without mentioning the invoice number shall be illegal and the transport of minor mineral with such receipt shall be unauthorized and illegal. Viewed from this angle, even the transit pass cum receipt placed on record by the present applicant at page 108 is perused, then it is seen that this transit pass is totally illegal. Invoice number is conspicuously absent in this transit pass cum receipt.

11. Be that as it may, seized transit pass from driver of the dumper in question shows that it was issued to the firm of the present applicant. Invoice number is again absent in this transit pass. Name of the driver is not mentioned in this transit pass. Destination of the minor mineral is also not disclosed in this transit pass. If these aspects are considered in the light of material elicited from co-accused Shahrukh Shikalighar and Ajay Bade, then prima facie it is seen that the minor mineral was excavated from the Sand Ghat allotted to the present applicant and it was transported without any valid transit pass. This prima facie connects the applicant to offences punishable under Sections 420

and 379 of the IPC.

12. So far as averments regarding the offence punishable under Section 307 of the IPC is concerned, there is no need to observe anything in that regard because even otherwise complicity of the applicant in the non-bailable offence is established prima facie from record of investigation. Moreover, Police papers shown by the learned Addl. Public Prosecutor shows that the present applicant has heavy criminal antecedents.

13. In the result, the Application fails and the same is accordingly rejected.

(A.M. BADAR)
JUDGE

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