

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

Criminal Application No. 4654 of 2016

District : Hingoli

Narsing s/o. Vishwasrao Nayak,
Age : 33 years,
Occupation : Agriculture &
Business,
R/o. Risala Bazar, Hingoli,
District : Hingoli.

.. Applicant.

versus

The State of Maharashtra,
Through Aundha Police Station,
District : Hingoli.

.. Respondent.

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Mr. Sachin S. Deshmukh, Advocate, for the applicant.

*Mr. S.J. Salgare, Addl. Public Prosecutor, for the
respondent.*

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With

Criminal Application No. 5043 of 2016

District : Hingoli

1. Kashinath s/o. Limbaji Shinde,
Age : 30 years,
Occupation : Agriculture,
R/o. Kesapur,
Taluka & District : Hingoli.
2. Amol s/o. Laxman Jadhav,
Age : 24 years,
Occupation : Agriculture,
R/o. Hingoli,
Taluka & District : Hingoli. .. Applicants.

versus

The State of Maharashtra,
Through Aundha Police Station,
District : Hingoli.

.. Respondent.

.....

Mr. N.S. Ghanekar, Advocate, for applicants.

*Mr. S.J. Salgare, Addl. Public Prosecutor, for the
respondent.*

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CORAM : A.M. BADAR, J.

DATE : 16TH SEPTEMBER 2016

ORAL ORDER:

Applicant Narsing s/o. Vishwasrao Nayak in Criminal Application No. 4654 of 2016 is claiming pre-arrest bail, whereas applicants Kashinath s/o. Limbaji Shinde and Amol s/o. Laxman Jadhav in Criminal Application No. 5043 of 2016 are claiming regular bail in Crime No. 57/2016 for offences punishable under Sections 420, 467, 468, 471, 472, 379, read with Section 34 of the Indian Penal Code and under Section 47(7) of the Maharashtra Land Revenue Code, 1966, registered with Police Station, Aundha, District Hingoli.

2. Heard the learned Counsel appearing for applicants. The learned Counsel appearing for applicants Kashinath Shinde and Amol Jadhav argued

that they have already been arrested by the Police and now they are in magisterial custody remand. The learned Counsel further argued that they are driver and cleaner of the truck which was accosted by Police with an allegation that it was carrying stolen minor mineral i.e. sand. The learned Counsel argued that with such averment, further pre-trial detention of applicants Kashinath Shinde and Amol Jadhav is not required.

3. The learned Counsel appearing for applicant Narsing Nayak argued that in all, nine sand guards are taken on lease by the applicant by participating in tender process initiated by the Collector, Hingoli. My attention is drawn to the allotment order dated 05.01.2016 issued by the Collector, Hingoli, allotting nine sand guards in Basmath and Aundha Taluka of Hingoli District in favour of applicant Narsing Nayak. The learned Counsel further argued that in order to expose the racket of theft of sand by using forged receipts, the applicant had made a complaint to the Collector on 01.07.2016. The applicant had even published an advertisement in the local newspaper on 29.06.2016. With this, according to the learned Counsel for the applicant, there was no reason for the applicant to commit theft of the minor mineral.

4. The learned Addl. Public Prosecutor opposed

applications by contending that applicant Narsing Nayak is master mind in the racket of theft of minor mineral in the Hingoli District. The learned Addl. Public Prosecutor further argued that Narsing Nayak is a powerful person owing forty vehicles. The learned Addl. Public Prosecutor further argued that the offence committed by Narsing Nayak is serious and therefore his custodial interrogation is warranted. The learned Addl. Public Prosecutor accepted the fact that except statement of co-accused Kashinath Shinde, there is no evidence against applicant Narsing Nayak. The learned Addl. Public Prosecutor further argued that one more offence is also registered against applicant Narsing Nayak with similar allegations.

5. Perused the FIR lodged by Giridhari s/o. Gyanobarao Kamble, Police Sub-Inspector of Aundha Police Station on 18.07.2016. On the basis of secret information received by Police, a tipper bearing registration No. MH-38/E-3838 was accosted by Police. That tipper was found to be driven by applicant Kashinath Shinde and applicant Amol Jadhav, cleaner of that tipper. The tipper was loaded with sand. Upon interrogation, applicant Kashinath Shinde is said to have disclosed to Police that the sand is loaded in the tipper at the Sand Ghat of applicant Narsing Nayak. The FIR also contains an averment that five receipts were produced by applicant Kashinath Shinde, driver of the tipper. According to

the averments in the FIR, those receipts were sent for examination to the office of the District Mining Officer / Collector, Hingoli. The investigator has received report from the said office that five receipts forwarded by the investigator were not issued by the office of the District Mining Officer.

6. Perusal of the FIR itself shows that none of the receipts seized by the investigator were bearing signature of applicant Narsing Nayak. Those receipts were produced before the investigator by the driver of the truck. Order dated 05.01.2016 issued by the Collector, Hingoli, shows that in all nine Sand Ghats from Hingoli District were allotted in favour of applicant Narsing Nayak. It is seen from annexures to the application that on 01.07.2016, applicant Narsing Nayak had lodged complaint to the Collector, Hingoli, with categorical averments that stolen sand is being transported with the aid of bogus royalty receipts thereby causing wrongful loss to the State as well as to the complainant / applicant Narsing Nayak. Inward stamp of the office of the Collector shows that the said complaint was received by the office of the Collector on 01.07.2016. Then there is another complaint dated 14.07.2016 by applicant Narsing Nayak to the Collector as well as to the Tahsildar with similar averments. That complaint also seems to have been received by the office of the Collector on 15.07.2016 and by the Tahsildar on

14.07.2016. It is also apparent that on 29.06.2016, applicant Narsing Nayak had published an advertisement in the newspaper to the effect that with the aid of forged receipts, stolen sand is being transported by owners of the tipper. The public notice also declares that if it is found that stolen sand is being transported under forged receipt, then declarant / applicant Narsing Nayak will not be liable.

7. Prima facie it appears that the revenue authorities were made known by the contractor / applicant Narsing Nayak regarding transport of stolen minor mineral with the aid of forged receipts.

8. In the background of these documents which are of *ante litem motam* in nature, the FIR in question needs to be examined. The FIR itself shows that none of the transit passes / receipts was having signature of applicant Narsing Nayak. As against this, except statement of the co-accused, there no other material with the investigator to implicate applicant Narsing Nayak in the crime in question.

9. Object of Section 438 of the Code of Criminal Procedure is to protect liberty of citizens. In the case in hand, prima facie it appears that accusations are made against the contractor / applicant Narsing Nayak with an object of injuring or

humiliating him by having him arrested particularly when he is having contract of nine Sand Ghats in his favour by paying highest amount in auction. In this view of the matter, liberty of applicant Narsing Nayak needs to be protected.

10. So far as applicants Kashinath Shinde and Amol Jadhav are concerned, they are driver and cleaner of the truck intercepted by the Police while allegedly carrying the stolen minor mineral. As of now they are in magisterial custody remand, their further pre-trial detention is not warranted.

11. Hence, I pass the following order :-

(a) Both Applications are allowed.

(b) In the event of arrest of applicant / accused in Criminal Application No. 4654 of 2016, namely Narsing s/o. Vishwasrao Nayak, in the above crime, he be released on bail on his executing P.R. Bond in the sum of Rs. 30,000/- and on furnishing one or more solvent sureties of the like amount.

(b-1) As a condition of this order, applicant Narsing Nayak shall attend concerned Police Station on every Sunday, in between 11.00 a.m. and 01.00 p.m. till filing of the charge-sheet and he should render his cooperation to the investigator in investigation of

the crime in question.

(c) Applicants / accused in Criminal Application No. 5043 of 2016, namely Kashinath s/o. Limbaji Shinde and Amol s/o. Laxman Jadhav, in the above crime, be released on bail on their executing P.R. Bond in the sum of Rs. 15,000/- each and on furnishing one or more solvent sureties of the like amount by each of them.

(d) As conditions of this order, applicants in both applications shall abide by the following directions :-

(i) Applicants shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(ii) Applicants shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial, in the event of filing charge-sheet, if any, against them.

(iii) Applicants shall not repeat

(9)

Cri. Appln. Nos. 4654 &
5043 of 2016

commission of similar type of offences in
future.

12. Both Applications are disposed of in the aforesaid terms.

(**A.M. BADAR**)
JUDGE

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