

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1268 OF 2016

1. Mr. Santosh Ram Patil	)	
2. Mr. Bala Baburao Jadhav	)	Applicants
Vs.		
The State of Maharashtra	...	Respondent

ALONG WITH
CRIMINAL BAIL APPLICATION NO. 1373 OF 2016

1. Mr. Sumit Shivkumar Wani	)	
2. Mr. Deepak Namdev Patil	)..	Applicants
vs.		
The State of Maharashtra	...	Respondent

ALONG WITH
CRIMINAL BAIL APPLICATION NO. 2126 OF 2016

Pandurang Tukaram Babare	...	Applicant
vs.		
The State of Maharashtra	..	Respondent

Mr. Niranjan Mundargi i/b. Ms. Sapana Rachure for the applicants in BA/1268/2016 and BA/1373/2016.

Mr. A.P. Mundargi, Senior Counsel a/w Mr. P.C.Kansara i/b. Ms. Sneha G. Sanap for applicant in BA/2126/2016.

Mr. Prashant Jadhav for State in BA/1268/2016 & BA/1373/2016.

Mr. S.S.Pednekar, APP for the State in BA/2126/2016.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 22nd November, 2016.

P.C.

Heard. These are the applications under Section 439 of Cr.P.C. seeking enlargement on bail in Crime No.25 of 2015 registered at New Panvel Police Station for the offences under Sections 395, 379, 420, 465, 468, 471, 363, 170, 171 and 120B of the Indian Penal Code and under Sections 41, 42, 66, 82 and 129 of the Indian Forest Act.

2. It is the case of the prosecution that the New Panvel Police Station had received information on 17.2.2015 at about mid-night that a truck container bearing No.MH-04-BU-6649 was abandoned in front of Sidhant Hotel Village Kalegaon of Bombay-Goa Highway. The Senior Officer had deputed P.I. Rakte and a police constable to go to the spot. The said truck was inspected and it was found that there were red wooden sandalwood logs weighing about 216 kgs. The station diary entry was taken to that effect and the case was being investigated.

3. In the course of investigation, it was revealed that the truck and the container belongs to one Mr. Prashant Bhillare. Accordingly, Prashant Bhillare was summoned to the police station. he was informed that the said sandalwood has been confiscated under the Forest Act. At the behest of Bhillare, it was revealed in the course of investigation that on 16.2.2015, one Rehimat had brought the said sandalwood at Village Salshi

in Satara District. The truck did not have a registration number. According to Bhillare, persons namely Kishore Yadav, Sherekar had taken charge of the container to load the said sandalwood in another container and asked one Ramjatan Kol to drive the said container and the destination was given to Ramjatan Kol. On the instructions of Bhillare, Sherekar and others, the truck was being sent to Nhava Sheva Port. The driver was driving the said truck on the road map given by Bhillare and others. When the truck had reached a particular point in District Raigad and was in front of a Dhaba namely, Mama Cha Dhaba. Suddenly the truck was intercepted by 5 – 6 persons who had come in Scorpio and had posed as police officers. It is the case of the prosecution that persons who intercepted the said truck were in Police Uniform. According to the prosecution, the said six persons had taken the driver Ramjatan Kol into custody and had kept him in confinement. He was then released at a subsequent spot i.e. Khanda Colony. It is alleged by the prosecution that Ramjatan had disclosed the incident to Kishore Yadav. The owner of the truck Prashant Bhillare met him at MGM Hokspital, Kalamboli.

4. The applicant Mr. Babre is a police constable. He was arrested on 5.3.2016. It is the case of the prosecution that Mr. Babre had conspired

with the co-accused i.e. the applicants herein and had taken charge of the truck. Perused the papers of investigation. It appears from the papers of investigation that the accused No.1 P.V. Bhillare @ Kishore, Kishore Yadav, Kishore Biramane, Ashok Sherekar and Rahimat cut the sandalwood without any licence from an unknown forest. It was being transported with an intention to export the same. In the said course, they had prepared two cartons bearing the same number. It was planned that the carton containing powder should be passed by the Customs Authorities and the same would be replaced by a carton bearing the same number containing Read sandalwood. The said container was to be brought to Nhava Sheva Port. It is apparent that the first set of accused had planned the entire incident right upto the port. Ramjatan was engaged by Prashant Bhillare to drive the truck to Nhava Sheva Port. He was engaged at Satara and that the road map was given by the first set of accused.

5. The second set of accused is the present applicant who had come into picture at the first point of time at Mama Cha Dhaba in Raigad District when they had taken charge of the truck which was already containing stolen goods of Forest produce. Upon perusal of the papers of investigation, it appears that there was a informer who was informing the

present applicants about the location of truck.

6. The learned Senior counsel rightly submits that the first set of accused i.e. Prashant Bhillare and others have been enlarged on bail as they were being prosecuted for an offence punishable under Section 379 of IPC. According to the learned Senior Counsel, the present applicants have taken charge of the goods which were already stolen i.e. they are thieves of stolen goods and have been in custody for more than six months.

7. The learned APP submits that the prosecution has filed an application for cancellation of bail of the first set of accused and notices have been issued to the respondents. It is also submitted by the learned APP that the applicants are being prosecuted under Section 170 and 171 of the Indian Penal Code as they had posed as public servants i.e. police officers. According to learned APP, Mr. Babare had conspired with the present accused and had taken undue advantage of his position and he is also being prosecuted under Section 120B of the Indian Penal Code. It is submitted by the learned APP that it is unfortunate that the police officer who is assigned duty of law and order is being prosecuted for not only just violation of law and order, but for committing offence under Section 395, 379 read with Section 120B and therefore, he does not deserve to be

enlarged on bail.

8. It is apparent that the Head Constable Babare appears to be associated with the present accused and it is only with his aid that the present accused had gathered courage, not to just steal the goods, but take away the truck with the stolen goods. There are serious lapses in the investigation. The first statement of Ramjatan is recorded on 3.3.2015 and the supplementary statement is recorded on 10.3.2016. Needless to say that Prashant Bhillare and others were arrested on 26.2.2015 and 27.2.2015 and only after their arrest, the first statement of Ramjatan Kol was recorded.

9. Be that as it may, the very fact that the first set of accused who have stolen the forest produce have been enlarged on bail and that the present applicants are in custody for more than six months. They deserve to be enlarged on bail.

10. The above observations are restricted to an application under Section 439 of Cr.P.C. and shall not be considered for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

(i) The applications are allowed.

- (ii) The applicants be enlarged on bail on each furnishing P.R. Bond in the sum of Rs.50,000/- and one or more solvent sureties in the like mount.
- (iii) The applicants shall surrender their passports, if any, to the Investigating Officer within two weeks from the date of being enlarged on bail.
- (iv) The applicants shall report to the concerned Police station as and when called and co-operate with the investigating agency to the best of their capacity.
- (v) The applicants shall furnish their cellphone number, landline number, permanent residential address to the investigating agency.

(SMT. SADHANA S.JADHAV, J.)