

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1480 OF 2016

1. Dnyaneshwar Ashok GavaliApplicants
2. Santosh Haribhau Keskar

V/s.

The State of MaharashtraRespondent

Mr. Aniket Nikam i/b Mr. Aashish Satpute Advocate for Applicant.
Ms. Veera Shinde APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : OCTOBER 5, 2016.

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 364 of 2016 registered at Indapur police station for offence punishable under sections 395, 353 and 341 of the Indian Penal Code.

2) It is the case of the prosecution that on 30/07/2016, Sadashivrao Kale lodged a report at the police station alleging therein that on 26/07/2016, he was present in the Tahsildar office and it was reliably learnt that there is illegal excavation of sand and therefore, the Tahsildar had taken steps to stop

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the said activities. When they reached the spot, they had seen that the truck bearing no. MH 42-B 9422 was proceeding. The sand was loaded in the said truck. The excavated sand was worth Rs. 80,000/-. Upon seeing the officers from the Tahsildar office, the accused had jumped from the truck and had fled from the scene. The officers of Tahsildar office were proceeding along with the truck to the police station and at that time, a Bolero jeep and 2 to 3 motorcycles had reached the spot. People from the Bolero jeep had alighted and had obstructed the office bearers to take the truck to the police. One Sampat Sarak has been named. The name of the applicant does not appear in the F.I.R. Applicant is mainly being prosecuted for offence punishable under section 353 of the Indian Penal Code.

3) On 24/08/2016, this Court had granted time to the learned APP to take instructions and had observed "No interim relief". On 14/09/2016, it was submitted by the learned counsel for the applicant that during the pendency of this application, applicant no. 1 was arrested and hence, the prayer seeking pre-arrest bail, as far as applicant no. 1 is concerned has become infructuous. On 26/09/2016, the learned APP had made a statement before this Court that there is no co-operation from the investigating officer and on that day, he had

sent the message to the learned APP that he would not be available for court work since he has to go for security to meeting of two sugar factories which are at a distance of 6 Kms within jurisdiction of Indapur Taluka. It was submitted that the investigating officer was not interested in co-operating with the court. In fact it was incumbent upon the investigating officer to attend the court and not the general meetings of two sugar factories on the same day and at the same time. Upon query made by this Court, investigating officer, who is present in the court, has specifically submitted that he had not informed the Superintendent of Police, Pune (Rural) that in fact he was to attend the High Court on that day and had sent the message to the learned APP in his personal capacity. The act of investigating officer in not co-operating with the Court proceedings is condemned by this Court.

4) As far as the facts of the case are concerned, it is seen from the records that on 11/09/2016, while in custody, statement of Dyaneshwar Gavali was recorded. The said statement was signed by the Dnyaneshwar Gavali and he has taken the truck as it belonged to him. It is further submitted that on that day, the truck was seized and was taken to the police station. Upon learning about the same, he had gone to the police station and showed the receipts to

the police and had taken away the truck along with him. He had receipt to show that he had paid fine amount. The truck was released in his favour and was sent to Pune. In the eventuality that investigating officer had found that there was illegal excavation of sand, there was no reason for investigating officer to release the truck. Applicant is being prosecuted for offence punishable under section 353 of the Indian Penal Code. No specific overt act is attributed to him.

5) Taking into consideration the nature of allegations, papers of investigation and the submissions advanced across the bar, applicant who happens to be a student, deserves to be granted pre-arrest bail. However, it is made clear that observations made herein above are *prima facie* in nature and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

6) Office to communicate this order to the Superintendent of Police, Pune (Rural).

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest, applicant no. 2 be enlarged on bail on furnishing

P.R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.

(iii) Applicant shall report to the police station as and when called, only after issuing a notice under section 160 of the Code of Criminal Procedure, 1973.

(iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)