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

Criminal Application [ABA] No.574 of 2016

(Hemant Diwakar Deshmukh and others
vs.
The State of Maharashtra, through Forest Department, Amravati)

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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

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Shri P.R. Agrawal, Advocate for the Applicants.
Shri S.J. Kadu, A.P.P. for the Non-Applicant/State.

CORAM : S.B. SHUKRE, J.
DATE : 28th SEPTEMBER, 2016.

Heard the learned Counsel for the applicants and the learned A.P.P. for the State.

By this application, the applicants are seeking anticipatory bail in P.O.R. No.45/2014, registered against them for the offence punishable under Section 51 of the Wild Life (Protection) Act, 1972 ('the Act of 1972' for short) in relation to violation of Sections 9, 39(3)(a)(b)(c), 44(1)(b), 48(a), 49 and 49-B(1)(b) of the Act of 1972.

Upon receiving an information that a 'Ghorpad', called the Monitor Lizard, having been illegally captured and brought to one agricultural field situated within the precincts of village Pimpalkhuta, was cooked and its meat was consumed by 7-8 persons in a party held in the evening of 17/07/2016 in the said field, the Forest Officers conducted a

raid on the agricultural field. The raid laid bare few empty liquor bottles, bones of an animal and pieces of leftover meat strewn at the spot. One person Maroti Waghmare was found to be present in the field. So, an enquiry was made with him. It was revealed that these applicants had taken active part in acquiring, possessing and destroying a wild animal called Monitor Lizard, listed in Schedule-I to the Act of 1972. These revelations made Forest Officers believe that an offence punishable under Section 51 of the Act of 1972 triggered by violations of several sections of that Act was committed by these persons and so the P.O.R. was registered and further investigation was made.

According to the learned Counsel for the applicants, the applicants are not involved in any manner in commission of the alleged crime. He submits that even otherwise, the prohibited acts as prescribed in Section 39(3)(a)(b)(c) of the Act of 1972 and other sections are not *prima facie* committed in the instant case. He further submits that no identification has been done and the statement of the co-accused cannot be used against the applicants in view of the bar under Section 50(9) of the Act of 1972 and Section 25 of the Indian Evidence Act. He further submits that the applicants are not the poachers and have roots in the society.

He also submits that the custodial interrogation of the applicants is not required. Thus, he urges that the applicants be released on anticipatory bail.

Strongly opposing the application, the learned A.P.P. for the State submits that there is an ample material *prima facie* showing involvement of the applicants in commission of the crime alleged against them and their custodial interrogation is very much necessary to unearth the source from where the Monitor Lizard was procured and the manner in which it was procured and also to ascertain as to whether or not there are more such Monitor Lizards having been illegally captured.

So far as the argument regarding the statement of the co-accused being hit by Section 50(9) of the Act of 1972 and Section 25 of the Indian Evidence Act is concerned, I must say, I am not impressed with it. The investigation has just begun and there is a long time to go for the trial before the Magistrate to commence. Bar under Section 50(9) of the Act of 1972 would come into picture only when the trial before the Magistrate would begin. So far as the confessional statement of the co-accused recorded by the Forest Officers is concerned, it may be pointed out, I have already held in the case of **State of Maharashtra vs. Suraj Pal,** in Criminal

Application No.99 of 2014, decided on 12/12/2014 that the Forest Officer being not a Police Officer within the meaning of Section 25 of the Indian Evidence Act, a confessional statement of the co-accused would not be hit by Section 25 of the Indian Evidence Act and that it could be read as a statement against the co-accused, so long as it discloses the relevant facts.

The statements of the co-accused - Maroti Waghmare and Vilas Dahake, at this stage, have disclosed the relevant facts *prima facie* incriminating the applicants in the crime registered against them. Their statements, at this stage, show that these applicants had taken active part in illegally acquiring or keeping in their possession and custody the Monitor Lizard and then destroying it by cooking and consuming it. One of these witnesses knows the accused persons including the applicants and the other of them knows them either personally or by names which he gathered during conversation between the accused during the course of the party. So, question of identification, at this stage, would not be a decisive factor by itself. Both these co-accused have also spoken about their own participation and extent in the various illegal acts leading to commission of the crime. There is also no evidence to show that the accused persons were the

licencees. The panchnama drawn out at this stage also supports the confessional statements of the co-accused. Seizures made from the spot of incident further *prima facie* strengthen the allegations made against these applicants. These facts and circumstances show that, *prima facie*, the applicants have violated Sections 39 and 49 of the Act of 1972, which violations are punishable under Section 51 of the Act of 1972. There is thus no substance in the argument that the applicants' acts, if accepted as they are, do not amount to violations of the said provisions of the Act of 1972.

The D.N.A. report, available on record, discloses that the pieces of leftover meat seized from the spot of incident were of the Large Bengal Monitor Lizard or Varanus Bengalensis. It is a Schedule-I, Part II animal and is an endangered species having prime importance in the food chain of a forest ecosystem. It is a predator occupying an intermediate stage of the food chain living off smaller animals and itself serving as food for the big guns of the forest. By this dual role, it helps forest ecosystem maintain it's balance and health, on which, we humans, hard put to find adequate water, leave alone clean water, and pure air to breathe, are so desperately dependent. If the forest ecosystem is disturbed and, it is likely to be disturbed, if its important elements are

destroyed, like the Large Bengal Monitor Lizard, the survival of mankind itself would come in danger. From this view point, the offence *prima facie* committed by the applicants is very serious with its adverse impact on the larger interest of the society.

Apart from the above factors of the present crime, there is also need in this case to enable the Forest Officers to carry out the investigation without any hindrance. If the anticipatory bail is granted to the applicants, it is likely that the investigation may be hampered and in that case the Forest Officers would not be able to make custodial interrogation of the applicants, which is different from inquisitorial interrogation in terms of its impact and efficacy on and for the investigation and which seems to be necessary. The applicants, as per their own submissions, belong to a class having respect and roots in the society and, therefore, there is a higher responsibility on their shoulders to safeguard the interests of the society. But, from the material collected so far in this case, it appears that the applicants have not *prima facie* discharged this responsibility and it gives rise to the further possibility of misusing of liberty by them, if released on bail.

For all these reasons, I am not inclined to grant this application. The application stands rejected.

The learned Counsel for the applicants requests that the interim anticipatory bail granted to the applicants be continued for a period of two weeks. The request is strongly opposed by the learned A.P.P.

Considering the fact that the applicants are on interim protection since 02/09/2016, I am of the view that no prejudice would be caused to the prosecution by extension of interim bail for another one week.

The request is allowed and the interim anticipatory bail granted to the applicants on 02/09/2016 is continued for one more week.

Authenticated copy of this order be supplied to the learned Counsel appearing for the parties.

sdw* **JUDGE

C E R T I F I C A T E

I certify that this order uploaded is a true and correct copy of the original signed order.

Uploaded by: S.D. Waghmare
P.A. to the Hon'ble Judge.

Uploaded on : 30/09/2016