

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 374 OF 2017

Shri Isa Jamaluddin Halde ...Applicant

Versus

1. The State of Maharashtra & Ors. ...Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 375 OF 2017**

Shri Isa Jamaluddin Halde ...Applicant

Versus

1. The State of Maharashtra & Ors. ...Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 376 OF 2017**

Shri Isa Jamaluddin Halde ...Applicant

Versus

1. The State of Maharashtra & Ors. ...Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 377 OF 2017**

Shri Isa Jamaluddin Halde ...Applicant

Versus

1. The State of Maharashtra & Ors. ...Respondents

Mr. Mohd.Saeed A. Moghul a/w Mr.N.B.Sawant for the Applicant in
all Anticipatory Bail Applications

Mr. Prashant Jadhav, APP for the State in Anticipatory Bail
Application No. 374 of 2017.

Mr.Deepak Thakre,APP for the State in Anticipatory Bail Application No. 375 of 2017.

Mr.Rajan Salvi, APP for the State in Anticipatory Bail Application No. 376 of 2017.

Mr.Y.M.Nakhwa, APP for the State in Anticipatory Bail Application No. 377 of 2017.

Mr.Nilakh Sachin Baburao, Range Forest Officer, Chiplun – present

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: MARCH 1, 2017

P.C. :

1. All these four anticipatory bail applications are decided by one common order as the applicant-accused is one and same and the nature of the offence is also the same. There are four different crime reports. The applicant-accused apprehends arrest in four cases for the offences punishable under sections 41 (2) and 52 of the Indian Forest Act, 1927. The said cases registered with the Forest Officer, Taluka – Chiplun, District – Ratnagiri in C.R. No. 8 of 2016 registered on 30th December 2016, C.R. No. 9 of 2016 registered on 31st December 2016, C.R.No. 1 of 2017 registered on 1st January 2017 and C.R. No. 2 of 2017 registered on 7th January 2017 in connection with illegal storage and custody of red sandalwood and seizure of the same by the Forest Officer of

Chiplun. It is the case of the prosecution that the flying squad of Forest Officer, on information, when raided the shop of one Sameer Dabholkar on 30th December 2015, 2.85 tonnes of red sandalwood was found. On enquiry, it was informed by Sameer Dabholkar that he had let out the said premise to one Isa Jamaluddin Halde i.e. the applicant-accused and the said red sandalwood was kept by him. So, the police seized the said red sandalwood valued at Rs.36 lakhs. On 31st December 2016, on the next date, the flying squad, on information, went to Chiplun-Guhagar by-pass Road. They found one temporary tin shed on the slope and the red sandalwood of 3.30 tones valued at Rs.40 lakhs was found to be illegally stored. The police seized the said red sandalwood. On enquiry, they found that the said red sandalwood was stored by the applicant-accused and that shed belonged to the applicant-accused. On 1st January 2017, on information, the police went to Al-Abbas building where the construction was going on. In the said building, on the ground floor, in three locked shops many sofa sets were found and after tearing those sofa sets, the flying squad of the Forest Office found illegal red sandalwood of 3.20 tonnes valued at Rs.40 lakhs and it was seized. Again, on information, when the flying squad visited Azad Nagar behind a

Madarsa on Chiplun – Govalkot Road, they came across illegal red sandalwood of 4.730 tonnes covered in a plastic paper. All these red sandalwood were found at the four places and were seized by the flying squad of Forest Officer under Panchnama and the offences were registered against the applicant-accused. Hence, these applications for pre-arrest bail.

2. The learned Counsel for the applicant/accused submitted that the applicant/accused is innocent and he has not committed any offence under the Forest Act. He submitted that the red sandalwood was admittedly found in two closed premises of which one is owned by one Mr. Shaukat, who has not produced any leave and licence agreement between the applicant/accused and Shaukat. Thus, there is no nexus between the said premises and the applicant/accused. The other place, where the red sandalwood was found, was also not owned by the applicant/accused. In two cases, the red sandalwood was found stored near the road side and there is nothing to show that the applicant/accused was involved in any manner of cutting, transporting the said red sandalwood. The learned Counsel has further submitted that apart from the facts and merit, the prosecution has not followed proper

procedure under the Indian Forest Act, 1927, hence, the entire prosecution is vitiated. He submitted that the Forest Officer cannot use power of arrest under section 64 of the Forest Act as this power of arrest is controlled by section 54 of the Indian Forest Act. He also relied on the section 52 of the said Act which states about the property liable to be confiscated. He pointed out that under the said section, there is a Maharashtra amendment which states that the officer who conducts the seizure shall make a report of such seizure not only to the Magistrate but to the concerned forest officer under section 61A. He further pointed out section 54 to point out that when the report of seizure is presented to the learned Magistrate, then the learned Magistrate shall take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law. He submitted that in the present case, the forest officer has seized the property and he wants to arrest the accused and also try him. This cannot be vested in one person. Basically, the forest officer has no power and authority to arrest any person. He relied on the judgment of the Supreme Court in the case of **Arnesh Kumar vs. State of Bihar & anr.**¹ and especially para 2 thereof. He

¹ (2014) 8 SCC 273

submitted that the Supreme court has observed that apart from the offence under section 498 of the Indian Penal Code, the directions given by the Supreme Court are also applicable for the offences under Dowry Prohibition Act and also to the offences punishable with imprisonment for a term which may be less than 7 years and which may extend to 7 years whether with or without fine. The present offence is committed under section 42 of the Indian Forest Act and the maximum punishable is prescribed as one year and therefore it is obligatory on the part of the police to give notice of arrest as per the directions given in **Arnesh Kumar (supra)**. He further submitted that if this is not followed, the Supreme Court has further given a mandate that if there is a failure to comply with the directions laid down in Arnesh Kumar (supra) then, apart from the police officer concerned, all other officers are liable to departmental action and the punishment for contempt of Court. It is further mentioned that if authorising detention without recording reasons is made by the Judicial Magistrate, then the Magistrate shall be liable for departmental action. Thus, the learned Counsel has submitted that in this case, it is mandatory for the police officers to give notice under section 41 to the applicant/accused before arrest.

3. The learned Counsel relied on the report of the enquiry dated 9.2.2017 in enquiry offence 3593 of 2016 – 2017 which was conducted against the applicant/accused and Yasin Salim Memon of developer of Al-Abbas building. In the enquiry conducted in respect of seizure of the sandalwood, it is concluded that the applicant/accused did not appear and did not claim anything and the other person Yasin Memon, appeared and said that he has not connection with the red sandalwood. The learned Counsel submitted that the fact that the said notice was not properly served on the applicant/accused and the applicant/accused has not claimed anything, itself shows that the has no connection with the red sandalwood.

4. Learned Prosecutors appearing for the State have produced the statements of witnesses and panchanamas and relevant documents before the Court. They pointed out that this applicant/accused is the one who was involved in illegally storing red sandalwood. As per the case of the prosecution, the Forest Officers are investigating the enquiry. They also relied on affidavit filed by one Sameer Shaukat Dabholkar in whose premises the red

sandalwood was stored and seized. It is submitted that the said Dabholkar in his affidavit has stated that he had let out the said shop to the applicant/accused for some period. Learned Prosecutors relied on another affidavit of one Mumtaz Ahmed Yunus Bhatkar, who has stated that he has an undivided right in the land bearing gat No.35/35 on the road side at village Mirjoli, Chiplun District Ratnagiri and the applicant/accused Isa Jamaluddin Halde has constructed a shed on it illegally without his permission, for which he has given a complaint against the applicant/accused to the police and has stated that the said red sandalwood is cut and stored by the applicant/accused. The learned Prosecutors further pointed out that in this case, they have obtained an affidavit one Sharad Raghunath Dandekar at Chiplun, who is the owner of survey No.39/2A1. He has stated that though on the 7x12 extract, his name is appearing, he is not in possession of the said land and the red sandalwood, which is stored on the land, does not belong to him. They also relied on statement of one Yasin Salim Memon who stated that he is a dentist and resident of Kaviltali, Chiplun, District Ratnagiri. He is also in the business of building development. He is constructing a building, namely, Al-Abbas and in three tenaments of the said

building, on the ground floor, in 30 plywood sofas, the red sandalwood was found hidden and he has said that he is not connected to such storage of red sandalwood in the sofas. They have also recorded statements of other persons in the said vicinity which disclose that the applicant/accused is having a shop, namely, A1 chicken centre opposite Al-Abbas building and the said sofa sets were off-loaded by the owner in front of the chicken shop. Therefore, the police have seized under panchanama the said sofa sets. They submitted that custody of the applicant/accused is necessary to find out details as to from where these red sandalwood was cut and brought; where it was to be transported, etc.

5. The learned Prosecutors further submitted that no notice under section 41 is required in this offence as it is covered under the special statute. It is not a case under the Indian Penal Code. The forest officers do not register a Crime Report (C.R.) as contemplated under section 164 of the Code of Criminal Procedure but they register a **Preliminary Offence Report (POR)** and, therefore, this being a special statute, the directions given by the hon'ble Supreme Court are not attracted. The learned Prosecutors

relied on para 11 of the judgment in **Arnesh Kumar (supra)** and submitted that where arrest is unnecessary, then, the directions in the case of Arnesh Kumar are required to be followed. This is not a case where the arrest is unnecessary.

6. Perused all the documents, statements, panchanamas and the orders of the forest officers. In four different places, the red sandalwood was found. At one place, the sandalwood was hidden in 30 sofa sets. Thus, it appears that it was stored for the purpose of transportation. From where such a huge quantity of red sandalwood was brought and from which forest it was cut and how it is cut and with whose help and who are involved in cutting the red sandalwood and where it was to be transported, etc. are the details that are yet to be investigated by the forest officers. These details cannot be procured without custodial interrogation of the accused.

7. Insofar as the legal position under the Indian Forest Act is concerned, in this case, the offence is committed under section 41(2)b) of the Indian Forest Act which is punishable under section 42 wherein the punishment is upto one year. In such a case, otherwise, the anticipatory bail could have been granted, however

section 65A of the Act which is a Maharashtra amendment, this offence under section 42 is declared as non-bailable w.e.f. 1.6.1985. When the punishment is of lesser term and yet, the offence is declared as non-bailable, itself shows that the Legislature considers such offence to be of a serious nature, where the custody of the accused can be given.

8. The submission of the learned Counsel that the section 64 of the Act empowering the forest officer or police officer to arrest any person without orders from the Magistrate is controlled by section 54 of the Act i.e., unless a Magistrate orders for arrest, no person can be arrested, are not convincing. The submission has no substance. The relevant sections i.e., sections 54, 64, 65A of the Indian Forest Act read thus:

“54. Procedure thereupon. – Upon the receipt of any such report, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law. State Amendments”

(Maharashtra) — In its application to the State of Maharashtra, for S.54, substitute the following section, namely,

“54. Procedure on receipt by Magistrate of report of seizure.—Upon the receipt of any report under sub-section (2) of section 52, the Magistrate shall, with all

convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and, subject to sections 58 and 61G for the disposal of the property according to law.”

64. Power to arrest without warrant.— (1) Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police station.

9. Learned Counsel submitted that if the persons is unknown, then, only the police or police officers can arrest them. This submission is erroneous, if the subsection (2) of section 64 is interpreted properly. Under section 64(1), a person can be arrested on the ground of reasonable suspicion. In *Arnesh Kumar* (supra), the Supreme Court has observed in paragraph 11 thus:

11. Our endeavour in this judgment **is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically.** In order to ensure what we have observed above, we give the following direction:

....”

(emphasis supplied)

10. In the laudable judgment in **Arnesh Kumar (supra)**, the honourable Supreme Court wanted to check unnecessary arrests, harassments at the hands of the police or under false cases suffered by innocent people and also there should not be unnecessary humiliation of the accused persons where the punishment is for a lesser term. The tendency to misuse the power of arrest is to be controlled. However, the Supreme Court has specifically mentioned that they wanted to ensure that there should not be any unnecessary arrest, however, it does not mean that in each and every case where the punishment is lesser than 7 years, the Supreme Court wanted to police to give first notice under section 41 before arrest. In cases like theft, robbery or as the present one, if notice and time is given to the person before arrest, then, manipulations or tampering of evidence pressurising the witnesses is possible and therefore, the facts of each case are to be testified and it is to be made sure that the arrest is on well founded reasons and necessary.

11. This is a fit case where arrest of the applicant/accused is necessary and hence, the Anticipatory Bail Applications are rejected.

(MRIDULA BHATKAR, J.)