

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

CRIMINAL APPLICATION (ABA) NO.795 OF 2016
(Rahul s/o Ashok Swami vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri A.R. Wagh, Advocate for applicant.

Shri A.V. Palshikar, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : JANUARY 11, 2017

Heard learned Counsel for both sides.

By this application, applicant, who is owner of truck bearing Registration No. MH-40/K-4641, has sought anticipatory bail by contending that on the date of incident, his truck was intercepted since was found having transported sand. It is the case of applicant that except for his being owner of the truck, he is in no way involved in the present crime. However, it is only on the basis of statement made by Truck Driver, who is arrested along with sand and truck, applicant is apprehending his arrest. It is, therefore, submitted that except for being owner of Truck, since there is no other involvement of applicant, interim protection granted to applicant may be confirmed.

Shri Palshikar, learned Additional Public Prosecutor for respondent, has opposed the application on the ground that one Poclain Machine used for excavation of sand is yet to be seized. However, he has not disputed the case of applicant regarding his

apprehension of arrest on the basis of statement of co-accused.

It appears to be the case of prosecution that on information received by Naib Tahsildar, Bramhapuri on 15/11/2016, applicant's truck came to be intercepted, which was found having loaded with 5 brass sand and on the basis of statement of Driver, offence came to be registered. Admittedly, applicant is not Contractor of the sand ghat wherefrom alleged sand is found to be excavated and transported, but only owner of the truck. Even if Driver of the truck, as seen from the case of prosecution, was not having in possession Transit Pass permitting him to transport sand, for his act, applicant in his capacity as owner of the truck, cannot be said to be directly involved having intention to commit theft of sand as alleged.

Having considered the facts as aforesaid, ground put forth by prosecution for rejection of application, i.e. to effect seizure of Poclain Machine, is not sufficient. The application is, therefore, allowed as per order below :

Interim protection granted to applicant on 13/12/2016 stands confirmed on the same terms and conditions with further direction to applicant to attend Investigating Officer as and when called till filing of the charge-sheet.

JUDGE

khj