

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

CRIMINAL APPLICATION (BA) NO.1090 OF 2016
(Abdul Hafeez s/o Shaikh Kareem vs. The 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 Anil Mardikar, Senior Advocate for applicant.
Shri N.H. Joshi, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : JANUARY 10, 2017

This application is filed for bail by accused involved in Crime No.4500/2016 (2232/2016) registered under Sections 429, 255, 420 and 468 of Indian Penal Code and Sections 9 and 11 of the Maharashtra Animal Preservation Act, 1995. The report is lodged by Nitesh Dorlikar, Police Sub-Inspector on 25/11/2016.

Shri Mardikar, learned Counsel for applicant, submits that even according to contents of report, involvement of applicant in the present crime cannot be established as applicant is in possession of a valid licence and he has officially indulged in trade of collecting skin of dead animals. It is contended that in that capacity, applicant has stored skin of such animals in his godown, which came to be seized in a raid carried out by the Police on 25/11/2016. In support of his case, applicant has relied upon licence. It is submitted that since applicant is not involved in killing of any animal, which is one of the ingredients of Section 429 of Indian Penal

Code, no case can be made out against him. It is further contended that offence under Sections 9 and 11 of the Maharashtra Animal Preservation Act, 1995 is punishable with imprisonment for a period of six months. It is, therefore, prayed that application may be allowed since investigation is complete.

Shri Joshi, learned Additional Public Prosecutor for respondent, has opposed the application as per reply and contended that there is direct evidence against applicant, who was found having stored in his godown skin of dead animals and similar such skin was found in a truck, which was parked in front of godown and Driver and Cleaner of such Truck came to be arrested. With reference to the licence issued by the Sales Tax Department, it is contended that said document can be considered at the time of trial. It is submitted that one "No Objection Certificate" issued by the Collector was relied upon by applicant during the course of investigation, which, however, is stated to be false and fabricated document. The prosecution has thus opposed the application.

In the background of submissions as aforesaid, it appears that on 25/11/2016, on information received by Police, raid was conducted at the godown of applicant where huge quantity of skin of dead animals and other articles were found stored in various rooms. Similarly, one truck having been loaded with such articles was also found in front of godown of applicant, which came to be seized along with its contents. The valuation of all muddemal articles involved in this case

as per prosecution case is to the extent of Rs.12 lakhs.

In the background of the case of prosecution, when Section 429 of Indian Penal Code is perused, it provides that whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years or with fine, or with both. Considering the required ingredients of said Section together with facts involved in the present case, it is prima facie noted that it is not the case of prosecution that applicant has in any manner involved in commission of mischief of killing of any such animal.

From the document filed in support of the application, which is stated to be licence issued by the Sales Tax Department and is stated to be in force on the day of incident, applicant is authorized to carry on such trade by dealing in soap stock, mutton tallow, hides and skins and is allowed to carry on business of such articles as he is a general supplier.

Learned Additional Public Prosecutor during the course of hearing has referred to "No Objection Certificate" alleged to be issued by the Deputy Collector, EGS, Nagpur dated 15/7/2009 vide which applicant is allowed to carry on such business for a period of 30 years and submitted that said "No Objection Certificate" is forged by applicant. Admittedly, applicant is in judicial custody and prosecution can very well carry out

investigation with reference to this document, but for this, there is no purpose in keeping applicant behind bar pending investigation.

In that view of the matter, though charge-sheet is yet to be filed, application is liable to be allowed by imposing conditions :

The applicant shall be released on bail on his executing a P.R. bond in the sum of Rs.50,000/- with one surety in like amount. Applicant shall mark his presence with Investigating Officer from 12/1/2017 for a period of one week and thereafter as and when called till filing of charge-sheet. Applicant shall furnish his residential address to Investigating Officer and shall up-date the same in the event of any change therein. The criminal application is accordingly allowed.

JUDGE

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