

Vidya Amin.

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

WRIT PETITION No. 4815 OF 2018

Faiz Gayasoddin Kokani	...	Petitioner
vs.		
The State of Maharashtra	...	Respondent

**WITH
WRIT PETITION No. 4978 OF 2018**

Saurabh Ramesh Goliet	...	Petitioner
vs.		
The State of Maharashtra	...	Respondent

Mr. Sandip D. Shinde i/b. Mr. Sujeet Deshmukh, Advocate for the petitioner in WP/4815/2018.

Mr. Sandip D. Shinde i/b. Akshay S. Purkar, Advocate for the petitioner in WP/4978/2018.

Mr. A.R. Patil, APP for the respondent/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 28th November, 2018**

P.C. :

Rule. Rule made returnable forthwith. By consent, both these Writ Petitions are heard together and decided finally at the stage of admission by a common order, as similar issue is involved in both these Writ Petitions.

2. In these Writ Petitions, by invoking the writ jurisdiction under Article 227 of the Constitution of India and under section 482 of Cr.

P.C. the petitioners have challenged the order dated 23rd October, 2018 passed by the learned Additional Sessions Judge, Nashik in Criminal Revision Application No. 269 of 2018.

3. The petitioners/accused are prosecuted for the offences punishable under sections 9, 39, 44, 48 and 51 of the Wildlife Protection Act, 1972 on 1st October, 2018 in C.R. No. WL 13/2018-19. The petitioners were found with two turtles and six crocodiles at their residence. They were produced before the learned Judicial Magistrate First Class, Nashik on 2nd October, 2018. On the same day, the petitioners were transferred to Magistrate custody and bail was granted to them. The said order of granting bail to the petitioners were challenged before the learned Sessions Judge, Nashik by filing Criminal Revision Application No. 269 of 2018, which was allowed by the learned Additional Sessions Judge, Nashik by order dated 23rd October, 2018. The order of bail was cancelled and the police officer was permitted to arrest the petitioners/accused and they were taken in custody. They were in police custody for the purpose of proper investigation. Hence, these Writ Petitions.

4. The learned counsel for the petitioners has submitted that

the order of learned Additional Sessions Judge cancelling the bail is erroneous. The petitioners/accused neither have committed any breach nor have committed any offence when they were on bail. He submitted that the petitioners are also ready to cooperate the Investigating officer.

5. The learned APP, while defending the order of learned Sessions Judge, has submitted that the petitioners/accused are not cooperating the Investigating officer and the police requires the custody of the petitioners for their effective investigation. Learned APP has further submitted that the petitioners were arrested on 1st October, 2018 and were produced before the learned Magistrate on the next date, i.e., 2nd October, 2018 and on the same day, the learned Magistrate granted bail without taking into account that some period is required for the police to find out from where these crocodiles and turtles were purchased or taken by the petitioners/accused. He has submitted that no opportunity was given by the Court to file say opposing the Bail Application.

6. Perused the orders passed by the learned Additional Sessions Judge and also learned Magistrate. The learned Magistrate has passed a brief but reasoned order wherein he has

mentioned that on perusal of the remand report, it is found that the crocodiles and turtles are recovered and after hearing the learned APP, Investigating officer and advocates of both the sides, he found that no custodial interrogation is required and no police custody is required, hence he transferred the petitioners/accused to Magistrate custody and granted bail. The learned Additional Sessions Judge has objected that the learned Magistrate has passed only one line order that the accused be released on bail on furnishing P.R. Bond and surety. The learned Sessions Judge ought to have considered the reasons given by the learned Magistrate while transferring the accused in Magistrate custody. The observation of the learned Sessions Judge that the Magistrate has not applied his mind to the grounds of police custody remand, is not correct. Moreover, the criteria for cancellation of bail is different and the Courts are slow in cancelling the bail unless specific case is made out by the prosecution under section 439(2) of Cr. P.C. The order of granting bail is maintained and the order of cancellation of bail is set aside.

7. Rule is made absolute on the above terms.
8. Writ Petitions are disposed of.

(MRIDULA BHATKAR, J.)