

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [ABA] No. 222 of 2018
[Jivanlal Fagu Lanje Vs. State of Mah., Duggipar PS, Distt. Gondia]

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

Court's or Judge's orders

Mr. R.R. Vyas, Adv., for the applicant.
Mr. S. S. Doifode, APP for non-applicant.

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CORAM : NITIN W. SAMBRE, J.

DATE : 13th August, 2018

01. In Crime No. 56 of 2018 for the offences punishable under Sections 420, 468 and 471 read with Section 34 of Indian Penal Code, the applicant is seeking pre-arrest bail.

02. It is the case of the applicant that under the Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [for short, "the Act of 2006"], Gram Sabhas of respective Gram Panchayats are authorized to accept the proposals for recognizing the forest rights. Under the said Act of 2006, even though the proposal for granting forest rights is moved at Gram Panchayat level, same passes through various authorities and it is the State Government through the Office of the Sub-Divisional Committee which gives final colour to the award of such rights.

03. One Jaywanta has sought such forest rights and the proposal came to have been cleared in the meeting dated 22nd January, 2018. Even the application was submitted on the next day of such meeting for allotment of forest rights.

04. It is the case of the prosecution that in the said meeting of Gram Sabha, the proposal of said Jaywanta was rejected by the Gram Sabha. However, the applicant in his capacity as a President of Wan Hakka Samiti tampered the resolution of Gram Sabha and submitted a proposal for recommendation of grant of forest rights. As a consequence, the Sub-Divisional Committee on 11th June, 2012 based on the tampered resolution of Gram Sabha granted rights in favour of said Jaywanta.

05. After the aforesaid forgery by the present applicant was noticed, the crime in question came to be registered.

06. Shri R. R. Vyas, the learned counsel for the applicant, would submit that the proposal which is placed on record at Annexure-II, does not bear the applicant's signatures and his signatures are tampered. According to him, the applicant is not the beneficiary of the forest rights granted and that being so, his custodial interrogation is not required. He would then urge that the applicant is not the final authority to approve the

proposal and that being so, he needs to be protected by this Court, as the other authorities who have granted rights are not impleaded as co-accused.

07. Per contra, Shri S.S. Doifode, learned Addl. Public Prosecutor, would oppose the claim and invite attention of this Court to the orders dated 22nd June, 2018, 9th July, 2018 and 25th July, 2018 so as to claim that the application of the present applicant is liable to be rejected. According to him, the proposal was moved by the applicant and also by tampering/forging the resolution recommending submission of a proposal for award of forest rights, he has misused his position as a Sarpanch with criminal intention.

08. Apart from above, the learned Addl. Public Prosecutor would urge that based on the above referred orders of this Court, the Collector has carried out an enquiry and has directed the Tahsildar to lodge an FIR against his own Public Servants as the original record in relation to the allotment of forest rights moved from the applicant is already missing. He would urge that there is a likelihood of large-scale fraud of a similar nature which cannot be investigated without custodial interrogation. He, thus, sought dismissal of the application.

09. Considered rival submissions.

10. It is not in dispute that the proposal of

recommendation of allotment of forest rights in favour of accused no.2 has originated from the applicant. There are statements of independent witnesses from the office of Tahsildar naming the present applicant's active role in pursuing such proposal. The fact remains that the documents which are produced on record speak of moving of proposal by the applicant in his capacity as a Sarpanch and after this Court ordered referring the matter to the handwriting expert, the original record is noticed to have gone missing from the office of Tahsildar. This Court ordered the aforesaid exercise to be undertaken by the Collector as the applicant has denied his signature.

11. The learned Addl. Public Prosecutor on instructions has already informed this Court that the officials from the office of Collector are already impleaded as co-accused in the crime in question.

12. Apart from above, the issue of missing of original record creates a strong suspicion about the involvement of the applicant in the crime in question. That being so, there is a strong prima facie case against the applicant. As such, the application stands rejected.

Judge