

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (ABA) NO.828/2019

Mohd.Sharif s/o Abdul Rajjak

..VS..

State of Mah., thr. PSO PS Dharni, District Amravati

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

Court's or Judge's Order

.....
Shri J.B.Kasat, Counsel for the Applicant.

Shri M.K.Pathan, Addl.P.P. for the State.

CORAM : V.M.DESHPANDE, J.

DATED : DECEMBER 19, 2019.

1. This is an application for pre-arrest bail.
2. The applicant is apprehending his arrest in connection with Crime No.398/2019 registered with Dharni Police Station, District Amravati for offence punishable under Section 379 read with Section 34 of the Indian Penal Code.
3. Heard learned counsel Shri J.B.Kasat for the applicant and learned Additional Public Prosecutor Shri M.K.Pathan for the State. Also, perused reply filed on behalf of the State.
4. Learned counsel Shri J.B.Kasat for the applicant, submitted that except statement of co-accused, that he sold on earlier occasion iron plates stolen from Irrigation Department, there is no material against the applicant. He submitted that the applicant is involved in a

scrap business and is doing his business since last 20 years. He, therefore, submitted that in the event of arrest, the applicant be released on bail.

5. Learned Additional Public Prosecutor Shri M.K.Pathan for the State, vehemently opposed the application for grant of pre-arrest bail. He submitted that investigation in crime is at very initial stage. Crime involves plates of gates of the Irrigation Department. He, therefore, submitted that fullest opportunity is required to be given to Investigating Officer.

6. Reply on behalf of the State, shows that during night patrolling, at Dharni, on 23.9.2019, a Three-Wheeler bearing registration No.MH-27/BW/0559 was intercepted. The said vehicle was found to be containing 10 iron plates, used for gates in Minor Dams. Occupants of the said vehicle were Sharik Beg Khalil Beg and Sk.Sharukh Sk.Iqbal. These two persons failed to give any explanation in respect of possession of those iron plates with them nor they could provide any information about ownership of the said iron plates. Therefore, said two persons were taken into custody and iron plates were also seized. As per the reply, since those iron plates were to be used in the Irrigation Department, Investigating Officer made enquiries with the Irrigation Department and that time it was revealed by Minor Irrigation Department, Dharni Division that 42 iron plates on earlier occasion were also stolen and those are missing. Those iron plates were used at Diya River which is

commonly known as Kolhapuri Dam. During interrogation, arrested accused persons revealed, on their memorandum statements, that on earlier occasion also they committed theft of such iron plates of the Irrigation Department and those were sold to Mohd.Sharif s/o Abdul Rajjak, the present applicant.

7. True it is, statement of co-accused is inadmissible evidence. However, during interrogation when such a confession is made, in my view, it always gives lead to Investigation Officer on which Investigating Officer can investigate further and work out on the said lead to collect admissible evidence against persons who are named in the confession statement.

8. Admittedly, against the present applicant, a complaint is pending in the Court of learned Magistrate at Dharni, Amravati vide Criminal Complaint Case No.6/2007 which is re-numbered as 350/2015 filed by the Range Forest Officer at Dharni. The said complaint shows that when shop of the applicant was searched, stolen forests' goods were found in his possessions. The said case is yet to be decided and is pending.

9. Thus, it can conveniently be stated that applicant is having past criminal record.

10. Though Investigating Officer has not applied penal provisions for receiver of the stolen property, from investigation conducted by Investigating Officer as on today, it is clear that the applicant is receiver of the stolen property.

The property in question is the property of the Irrigation Department which is primary article for the said Department.

11. In this view of the matter and looking to fact that the applicant is having criminal record at his discredit and a criminal case is pending against him, in my view, the present case is not a case wherein this Court should exercise its discretion in favour of the present applicant. Consequently, the criminal application is rejected and disposed of accordingly.

JUDGE

!! BRW !!

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