

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.920 of 2020

WITH

**CRIMINAL APPLICATION NO.1960 OF 2020
IN ABA/920/2020**

- 1) Anilkumar Anantlal Das,
Age 50 years, Occupation Service,
R/o Sahayogi Nagar, Ner Big
Bazaar, Sector -2, Nichitpur,
Dhanbad, Saraitela, Jharkhand,
And Current R/o Ner Nagewadi
Dist. Jalna.
- 2) Jagjit Singh s/o Ujagar Singh,
Age 53 years, Occupation Business,
R/o Wadeshwar Nagar, Wadgaon
Sheri, Pune.
Present residing at Near Nagewadi,
Jalna Dist. Jalna.

...Applicants

VERSUS

The State of Maharashtra,
Through Police Station Office, Badnapur
Police Station Tq. Dist. Jalna.

...Respondent

.....
Advocate for Applicants : Mr. S. V. Adwant h/f Mr.
Shreerang Bhandarkar.
APP for Respondent-State : Mr. V. S. Badakh.
Advocate for Assist to APP : Mr. V. B. Madan.
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CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 07-12-2020.

ORDER :

1. Present application has been filed by the original accused persons under Section 438 of CrPC, who are apprehending their arrest in connection with Crime No.338 of 2020, registered with Badnapur Police Station Dist. Jalna, on 26-08-2020, for the offence punishable under Section 304 read with 34 of the IPC and under Section 3 and 4 of Mines Act, 1952.

2. Heard learned Advocate Mr. S. V. Adwant holding for Mr. Shreerang Bhandarkar for applicant, learned APP Mr. V. S. Badakh for respondent-State and learned Advocate Mr. V. B. Madan for assist to APP.

3. It has been vehemently submitted on behalf of the applicants that the State Government had undertaken preparation of 'Maharashtra Samruddhi Mahamarg' i.e. the construction of Mumbai-Nagpur Express Way which is stretching 701 kilometers comprising of eight lane running through ten districts, 26 Tahsils and 390 villages. Maharashtra State Road Development Corporation (MSRDC) is the nodal agency responsible for the executing the project. One 'Montecarlo Limited' company has undertaken the

construction of the said road. Present applicants are the employees of said company. Applicant No.1 is presently designated as Associate Vice President of the Highway Division and he is deputed for district Jalna. Applicant No.2 is designated as Senior Manager Co-Ordination.

4. It has been vehemently further submitted that the FIR has been lodged by one Pandurang Shivhari Kekan at the behest of local politician when Pandurang lost his son in a ditch filled with water which was near the road under construction. It has been alleged that the said pit / ditch was created by the company of the applicants which was then filled with water in which certain boys were swimming at the relevant time and the son of the informant got drowned. In fact, the said pit is not dug by the applicants company. It was alleged against the company of the applicants that there was illegal excavation by the company. The explanation by MSRDC was called which has been replied. The learned Advocate appearing for the applicant tried to demonstrate on the basis of Google Map and other documents as to how the said ditch could not have been the result of excavation by the company they represent. The unfortunate incident has taken place, however there could not

have been knowledge about any such incident to the applicants. There is absolutely no negligence on their part. The allegations in the FIR are vague and it can be seen that the alleged incident had taken place on 30-07-2020 and the FIR has been lodged on 26-08-2020. This Court has protected the applicants by way of interim protection and accordingly they have co-operated the investigation. Their physical custody is now not required, therefore that order passed by this Court deserves to be confirmed.

5. Per contra, the learned APP Mr. V. S. Badakh who has been ably assisted by learned Advocate Mr. V. B. Madan vehemently submitted that the applicants are admitting that the construction work of the road undertaken by their company is still going on. The company had illegally excavated part of the road or earth which was not the spot from which the proposed road goes. As a result of that illegal excavation, a big ditch has been created, it is just near Dudhana River. That excavation is in fact in the bed of the river itself and when that ditch is filled with water, people were enjoying swimming in the same. It could have been anticipated by the applicants that some mishap may take place when they are illegally excavating the ditch. The Revenue Record shows that explanation

from the company was called and the Revenue Officers have taken steps every time. However, no precautionary measures have been taken by the company so that any untoward incident should not take place. The son of the informant who was aged 16 died due to drowning in that ditch. It was sheer negligence on the part of the company. The young son of the informant has expired, and therefore, offence under Section 304 of IPC is definitely made out against the applicants. Physical custody of the applicants is required for the purpose of further investigation.

6. At the outset, it is to be noted that this Court by order dated 15-10-2020, had granted interim protection to the present applicants. At that time note was taken that the incident had taken place on 30-07-2020 and the FIR has been lodged on 26-08-2020. The delay in lodging the FIR is definitely take a note of, though on merits it may be a fact for consideration as to whether that delay is fatal or not. Further the present applicants are the employees of the company. Both of them appear to be incharge of district Jalna, yet it is to be noted that according to the prosecution the said ditch is the result of excavation illegally done by the Montecarlo company and it is in respect of the road of which the preparation has been assigned

to them. The accused/applicants are disputing that fact. This Court cannot go into that aspect at this stage also, but the fact remains that there was a ditch which was filled with water. At least at this stage nothing has been produced on record to show when that ditch was created. What is produced on record is the communication after lodging of the FIR. Explanation was called either on the same day of FIR or subsequent thereto. The company is denying that the said ditch is created by them. It appears that there was a complaint communication from Ex-Member of Legislative Assembly, Badnapur on 20-08-2020. The fact is required to be noted that when the incident had taken place on 30-07-2020, the ditch might have been in existence much prior to that date, then why the Revenue Officers or the MSRDC Officers were sleeping if they had noted that it was the illegal excavation. It is not the question of negligence by the company then it may be the negligence of the Revenue Officers or / and the officers from the MSRDC also. If anything is being done illegally or what is not as per the terms of contract, then why the said officials are not taking steps at the right time, is a question. They would woke up only when any untoward incident would take place and then the blame game would start.

7. The learned Additional Sessions Judge before whom the present applicants had filed application under Section 438 of CrPC has considered the documents of accidental death. It is stated that panchanama of the spot gives dimension of the ditch as 30 feet x 40 feet and 20 to 30 feet deep, in which there was water till the level of 15 to 20 feet. It is observed that whoever has made the ditch, was guilty of violation of permission granted by the competent authority who had permitted the excavation to the extent of 5 feet only. This may be referred to that person who has done the act. But then what was there, before the learned Additional Sessions Judge to show that it is made by the present applicants is a question, and even before this Court after the documents were called, learned APP could not pointed out that, that ditch was excavated by the employees of the Montecarlo company, that too under the instructions from the present applicants. A reference has also been made about the complaints made earlier that the said ditch is dangerous to human lives and even a person had attempted to commit suicide in the said ditch. This could have been attributed to the alleged negligence of the applicants provided. There is such evidence on record to show that it is created by the applicants or on their say by some other employee.

8. It is very much unfortunate that the son of the informant lost his life due to drowning in that ditch. But in order to connect the said incident with the applicants, there should be some such strong piece of evidence with the Investigating Officer, to show that the ditch was dug on say of the applicants, or it is on the part of that piece of land which is handed over to Montecarlo company for the preparation of the road.

9. Section 304 of IPC requires element of *mens rea* to be present, or in other words, knowledge about any such incident that would take place. The facts of the case do not *prima facie* attract this ingredient of the offence, and even if for the sake of arguments it is accepted for a while that the ingredients have been made out, yet the nature of the offence as such that it does not require physical custody of the applicants for the progress of the case. There are no criminal antecedents as against the applicants. There is no question of the fact that they would abscond or may not be available at the time of trial. It appears that they have co-operated with the investigation when they were directed to attend the police station. Under such circumstance, while confirming the order that was earlier passed by this Court, it is not necessary that they should be asked

to remain present before the Investigating Officer on every Saturday and Sunday, that deserves to be modified by making it once in a month i.e. first Sunday of every month till the filing of charge-sheet.

10. For the above said reasons, following order is passed.

ORDER

- 1) Application stands allowed.
- 2) The order passed by this Court on 15-10-2020 granting ad-interim protection to the present applicants, is hereby confirmed and made absolute.
- 3) In other words, if the applicants are not arrested till now, in the event of their arrest in connection with Crime No.338 of 2020, dated 26-08-2020, registered with Badnapur Police Station Dist. Jalna, for the offences punishable under Section 304 read with 34 of the Indian Penal Code and under Sections 3 and 4 of the Mines Act, 1952, they be released on PR OF Rs.50,000/- (fifty thousand), with two solvent sureties of Rs.25,000/- each (twenty five thousand).
- 4) The applicants shall not indulge in any criminal activity.
- 5) Applicants shall attend the concerned police station once in a month i.e. first Sunday of every month, in

between 10.00 a.m. to 04.00 p.m., till the filing of charge-sheet

6) The applicants shall co-operate with the investigation.

7) In view of disposal ABA No.920 OF 2020, Criminal Application No.1960 of 2020 stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-