

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

LD-VC-CRI ABA NO.947 OF 2020

(Sk. Salim Sk. Sultan Vs. State of Maharashtra thr. PSO PS Sonala, Tq. Sangrampur,
Dist. Buldhana)

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

Court's or Judge's orders.

Shri A.M. Tirukh, Advocate for Applicant.
Shri V.P. Maldhure, APP for Non-Applciant/State.

CORAM: ROHIT B. DEO, J.

DATE: 7th AUGUST, 2020.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2] The applicant is apprehending arrest in Crime 153 of 2020 registered with the Police Station Sonala for offence punishable under section 379 of the Indian Penal Code.

3] The first information report which is lodged on 04.07.2020 by the Talathi states that the incident occurred on 03.07.2020 at 03:00 p.m.

4] The gist of the report is that information was received from Police Station Sonala that one Tractor filled with sand is detained at the Arkacheri river bed. The informant visited the spot along with *panch* Kotwal

Morba Bhanudas Unde and others. Police Constable More was present at the spot and Tractor bearing registration MH-27 BB-0687 with lorry attached, which was filled with sand, was standing at the river bed. The front left wheel excel of the tractor was broken. Police Constable More then left for the Police Station. The informant interrogated the owner of the Tractor who disclosed his name as Sheikh Salim Sheikh Sultan (applicant herein). The informant asked the applicant whether he possessed the transportation permit. The applicant informed the informant he did not possess any permit. The *panchnama* was recorded and since the left wheel of the Tractor was broken, it was not possible to remove the Tractor from the river bed. The applicant refused to sign the *panchnama* and left the spot. Since it was not possible to take the Tractor to the Police Station, the raiding party returned. The next day on 04.07.2020 at 03:00 p.m., as instructed by the Tahsildar the informant went to the spot and found that the Tractor had been removed. It was learnt that the Tractor was removed by the applicant from the spot. The report alleges that the applicant attempted to destroy evidence.

5] While rejecting the pre-arrest protection, the learned Sessions Judge has noted that the applicant was involved in similar activity in 2018 and was imposed fine. In response to a query by this Court, Shri Tirukh fairly states that the imposition of penalty was not then challenged.

6] Several submissions are advanced by Shri Tirukh. It would not be necessary to deal with the submissions in great detail since they touch the merits of the matters. Illustratively, Shri Tirukh submits that the report is delayed. It is difficult to appreciate the said submission. The report is lodged immediately on noticing that the Tractor was removed from the spot. In any event, the effect of a delayed report, even if it is assumed that the report is delayed, is a matter which would be looked into by the trial Judge. The other submission is that one signatory to the *panchnama* has filed on record an affidavit before the learned Sessions Judge denying stating that she was not witness to the *panchnama*. This aspect would also be looked into by the learned trial Judge. While dealing with an application for pre-arrest bail, it is not expected of the Court to conduct a mini trial.

7] Considering the material on record, this Court is more than satisfied that the discretion may not be exercise in favour of the applicant. Sand theft ultimately is an offence against the society. The casualty is the ecology and environment in which every citizen is deeply invested.

8] The order be communicated to the counsel appearing for the parties, either on the e-mail address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

NSN

Nitin
Nikhare

Digitally signed
by Nitin Nikhare
Date: 2020.08.07
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