

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

914 ANTICIPATORY BAIL APPLICATION NO.200 OF 2021

AVINASH KISAN RATHOD AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. P.P. Mandalik, Advocate for the applicants.
Mr. A.S.Shinde, A.P.P. for respondent - State.

...

CORAM : **PRAKASH D. NAIK, J.**

DATE : 21-10-2021

ORDER :

1. This is an application for anticipatory bail in Crime No.376/2020 registered with Naldurg Police Station, District Osmanabad for the offences punishable under Sections 332, 379, 406 read with Section 34 of the Indian Penal Code (for short, "I.P.C.") and under Sections 48 (7) and 48 (8) of the Maharashtra Land Revenue Code, 1966.

2. The First Information Report (for short "F.I.R.") was lodged by Revenue Assistant, Tahsil Office, Tuljapur. It is alleged that on receipt of the information about illegal excavation of minerals and soil by using JCB, the informant and others proceeded to the place known as "*Wadacha Tanda*". While reaching there, they noticed that there was excavation at two places. They also saw that excavation was being carried out by using JCB machine. When they

were going towards JCB, the driver of JCB tried to flee from the place of JCB. He was chased and JCB was intercepted. On inquiry with him, he told the name of the owner as Vikas Chavan, who was present at the place of incident. Inquiry was made with him. He was accompanied by one Anil Rathod. Both of them had altercation with complainant and others. They were threatened. Vikas Chavan stated that he would accompany the informant and JCB would be brought to Police Station. While all of them were proceeding towards Police Station, Vikas Chavan managed to open the door of the vehicle and fled away. The F.I.R. was registered.

3. Vide order dated 16th March 2021 this Court had granted interim protection to applicant No. 1. In paragraph - 6 of the said order, it was observed that case was made out against applicant No.2 as he was present on the spot where illegal excavation was going on. He managed to run away. His custody would be required and therefore his application has been rejected. As far as applicant No.1 is concerned, it was observed that his name does not appear in F.I.R. Although the informant stated that one Anil Rathod was present at the place of incident, he does not say that he was also accompanied by applicant No. 2 to Police Station. If the applicant No.1 was present on the spot, there was no hurdle to the informant to take him alongwith them.

4. Learned Counsel for the applicants submitted that the name of applicant No. 1 is Avinash Rathod and not Anil Rathod. Custodial interrogation of applicant No.1 is not necessary. In view of the directions issued in interim order passed by this Court, the applicant No.1 remained present before the Investigating Officer.

5. Learned A.P.P. submitted that the statements of witnesses were recorded during the course of investigation which indicate the presence of Anil Rathod.

6. It is debatable whether Anil Rathod and the applicant No.1 is one and the same person. Assuming that they are one and the same person, it is evident from the F.I.R. that Anil Rathod was allegedly present on the spot. However, he was not asked to accompany them to Police Station.

7. In light of the observation made by this Court in the interim order as well as the factual aspects of this matter, the custodial interrogation of applicant No. 1 is not warranted. Interim protection granted to him deserves to be confirmed. Hence, the following order.

ORDER

- (i) ABA No. 200 of 2021 is partly allowed.
- (ii) In the event of arrest of applicant No.1 in Crime No.376/2020 registered with Naldurg Police Station, District Osmanabad, the applicant No.1 be released on

bail on executing P.R.bond in the sum of Rs. 15,000/- with one or more sureties in the like amount.

- (ii) Applicant No.1 shall appear before the Investigating Officer as and when called for.

8. The application is disposed of.

(PRAKASH D. NAIK, J.)

VD_Dhirde