

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.332 OF 2021

1] JAYKUMAR LAXMAN GAIKWAD
2] ABDUL RAFIQ KADARI
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Salunke Sudarshan J.
APP for Respondent/State : G.L. Deshpande
...

CORAM : MANGESH S. PATIL, J.

DATE : 26.04.2021

PER COURT :

During the course of arguments it transpires that a photocopy of the original FIR and particularly the description of the incident in column No.12 as appearing at page No.13 has not been correctly transcribed in the typed copy of the FIR placed at page No.10. A vital portion as to the reason why the Sub Divisional Officer who had taken part in effecting the raid had to leave the spot, mentioned in the original (page 13) is conspicuously missing in the typed copy (page 10). It is a serious matter. Either it is an attempt at practising fraud on the Court or it is a matter of utter negligence. When the fact is brought to the notice of the learned advocate for the applicants, he tenders apology and submits that it is merely a matter of negligence or oversight. The apology is accepted.

2. The applicants are seeking bail in the event of their arrest in connection with Crime No.286/2020 registered with Majalgaon (Rural) Police Station for the offence punishable under Sections 379 and 353 of the Indian Penal Code.

3. The FIR has been lodged by a Talathi to the effect that he along with the Sub Divisional Officer and other staff of the Revenue Department had gone to a reservoir on a tip off and found a Hyva Truck loaded with sand. They seized the truck. The informant Talathi was asked to wait. The Sub Divisional Officer left the spot. It is then alleged that after some time three persons arrived and by threatening the informant stole away the truck. He then lodged the FIR against unknown persons and the offence was registered.

4. Heard the learned advocate for the applicants and the learned APP and perused the papers of the investigation. No doubt the offences of the crime regarding stealing of mines and minerals and assault on public servant trying to prevent it are on the rise. But then, simultaneously each case will have to be judged at its own merits.

5. Though the FIR reads that three persons had threatened the informant and had decamped with the truck, the offence is registered only against two unknown persons. No description of any of these persons can be found in the FIR.

6. When a query was put to the learned prosecutor as to on what basis the applicants are now being suspected to be two of the accused persons who had decamped with the truck, she submits that it is witness who is a mechanic by profession Mr. Arif Dagdu Shaik on the basis of whose statement the applicants are now being identified. Perusal of this statement would reveal that one Faiyaz Shaik and Amar Naiknavare had made a phone call to him requesting him for repairing a Hyva truck in the reservoir in the wee hours of 18.11.2020. On their request when he went to the spot he saw that the present informant was standing there by the side of Hyva truck which was loaded with sand. He states that couple of persons were standing next to him. When he inquired as to whom Hyva truck belonged the two

persons standing next to the informant told their names which according to him were Jaykumar Laxman Gaikwad and Abdul Rafiq Kadari resident of Dharur which are the names of the present applicants. He then states that he thereafter inspected the Hyva truck and found that there was some electrical fault which he repaired. He then states that the driver of the truck then unloaded it and went away with the truck. As can be seen, at the risk of scanning the material which is otherwise not permissible while deciding the application for anticipatory bail I cannot avoid a temptation to mention/observe that none of these details can be found in the FIR when in the normal course at least few of them ought to have appeared. Even presence of this witness on the spot is conspicuously absent in the FIR.

7. Apart from the above state of affairs it is also important to note that the learned advocate for the applicant emphatically states that the Hyva truck does not belong to either of the applicants and there is no question of they claiming its possession. Papers of the investigation do not show that any investigation has been conducted to trace out the owner and registration number of the truck.

8. It is in view of all the aforementioned facts and circumstances, when the statement being relied upon by the prosecution is not compatible with the allegations of the FIR and even the statement is recorded after more than a month and a half of the incident, the applicants deserve to be granted anticipatory bail more so when there are no criminal antecedents as well.

9. The Application is allowed. In the event of arrest of the applicants in connection with Crime No.286/2020 registered with Majalgaon (Rural) Police Station for the offence punishable under Sections 379 and 353 of the Indian Penal Code, they shall be released on bail on their executing personal recognizance for an amount of Rs.15,000/- each and furnishing a solvent surety in the like amount each subject to following

conditions:

- a) They shall attend the concerned Police Station as and when called by the Investigating Officer and shall cooperate him.
- b) They shall not tamper the evidence or influence the witnesses in any manner.

(MANGESH S. PATIL, J.)

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