

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

7 ANTICIPATORY BAIL APPLICATION NO.433 OF 2021

**QUADRI SYED MUSTAFA S/O.NOORUL MUKHTADA
VERSUS
THE STATE OF MAHARASHTRA & ANOTHER**

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Mr.S.S.Kazi, Advocate for the applicant.

Mr.V.S.Badakh, APP for the respondent-State.

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**CORAM: MANGESH S. PATIL, J.
DATE : 07.06.2021.**

P.C.

This is an application under Section 438 of the Criminal Procedure Code as the applicant is apprehending arrest in connection with Crime No.I-178 of 2020, registered with Dharangaon Police Station, District Jalgaon, for the offences punishable under Section 457, 380, 120 (B) and 413 of the IPC.

2] In substance the allegations as can be made out from the papers of the investigation and copy of the charge sheet are to the effect that huge quantity of the tyres were stolen from the shop of the informant in the night intervening 10th September, 2020 and 11th September, 2020. It is now being alleged that some of the recently arrested accused have disclosed about having stolen tyres and sold them to the present applicant.

3] Learned Advocate Mr.Kazi for the applicant would strenuously submit that the applicant is a businessman of a long standing repute. He has never been involved in any crime. He is being falsely implicated. In fact the statement of the co-accused Anil Bisram Shinde which is part of the charge sheet discloses about having sold the tyres to the accused no.6 and has not named the applicant in any manner. The applicant is now being involved based on inadmissible statements / disclosure of a co-accused.

4] Learned Advocate would submit that the applicant was granted ad-interim protection. Pursuant to the condition imposed in the order, he has attended the concerned Police Station thrice. He is ready to cooperate the Investigating Officer even now. Ad-interim anticipatory bail may be confirmed.

5] Learned APP would strongly oppose the application. He would submit that couple of accused have been arrested as recently as in the month of March 2021. The charge sheet was already filed against other accused. It is during interrogation of the accused who have been recently arrested that it transpired that the stolen tyres were sold to the applicant. It is in view of such changed scenario that now custodial interrogation of the applicant is necessary. Not a single tyre could be recovered up till now. Custodial

interrogation of the applicant is therefore necessary and the application be rejected.

6] I have carefully gone through the papers of investigation. It does appear that already a charge sheet has been filed based on the investigation that was carried out which *inter alia* contained a statement of the accused no.1 to the effect that after steeling the tyres those were sold to the accused no.6. Obviously, involvement of the applicant did not transpire then and consequently he was never sought to be implicated in the crime.

7] The papers of the investigation would now reveal that two of the accused namely Rama Panya Pawar and Rama Subrao Kale have been arrested in the month of March 2021 i.e. after filing of the charge sheet. A statement of one of them is recorded and is now being relied upon under Section 27 of the Evidence Act. In his statement, he disclosed that the tyres were sold to the applicant. Obviously, admissibility or otherwise of such statement of a co-accused need not be gone into at this juncture when the case *qua* the applicant is at the stage of the investigation. The fact remains that the co-accused has disclosed involvement of the applicant.

8] It is in view of such peculiar state of affairs when a query was put to the learned Advocate for the applicant as to why the co-accused would falsely implicate the applicant,

learned Advocate submits that in fact the applicant doesn't know any of these co-accused and there was no such reason. If at all there is no animosity between the applicant and co-accused and when one cannot perceive any plausible reason for the co-accused to falsely implicate the applicant, at this juncture, it would be an important circumstance to disclose involvement of the applicant in the crime. If this is so, custodial interrogation of the applicant, irrespective of his status in the society, is highly necessary.

9] The application is rejected.

10] At this juncture, learned Advocate for the applicant requests to extend interim protection for a period of 4 weeks to enable him to approach the Supreme Court.

11] Request is rejected.

[MANGESH S. PATIL, J.]

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