

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

ANTICIPATORY BAIL APPLICATION NO.609 OF 2021

1. DUNGA TATARAO S/O RAMA JOGI NAYADU  
2. PITAMBAR NARYAN JENA  
VERSUS  
THE STATE OF MAHARASHTRA

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Advocate for the Applicants : Mr. Shailesh S. Chapalgaonkar.  
APP for the Respondent – State : Mr. A. V. Deshmukh.

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**CORAM : V. G. BISHT, J.**

**RESERVED ON : 31<sup>st</sup> AUGUST, 2021**  
**PRONOUNCED ON : 7<sup>th</sup> SEPTEMBER, 2021**

**PER COURT :-**

1. This is an application under section 438 of the Code of Criminal Procedure, 1973 preferred by the applicants seeking grant of pre-arrest bail in connection with Crime No.O-8 of 2019, registered with Kopargaon Police Station, District Ahmednagar for the offences punishable under Sections 143, 144, 149, 353, 395, 411 read with Section 34 of the Indian Penal Code, 1860, Section 26(1)A, G, D, F, H and 63(k) of the Indian Forest Act, 1927, Sections 2, 9, 51 of Indian Wild Life Protection Act, 1972, Section 3 of Indian Conservation Act, 1980 and Biological Diversity Act 2002 etc.

2. It is the case of prosecution that on 28.08.2019 the informant was on patrolling duty with Senior Officer Thorat at Village Jawalke, Reserved Forest Area, in Gut No.176, 217 and 241 he found that excavation of soil was going on and the soil was being used for construction of Samruddhi Mahamarg Road without following due procedure. When he made an inquiry with the persons, they told that soil is owned by them. Then this fact was brought to the notice of Forest Officer at Kopargaon. When Forest Officer came on the spot, the applicants fled away. Later on it was found that theft was committed in excavation of 22377.00 (G.M.) 7970.00 Brass of Murum valued at Rs. 1,58,14000/-. Accordingly the complaint came to be lodged.

3. Mr. S. S. Chapalgaonkar, learned counsel for the applicants, submits that the alleged incident took place in the year 2019 and the charge-sheet has already been filed. According to learned counsel, the Gayatri Project Company Limited immediately, after lodging the complaint, on 30.08.2019 by communication (Exhibit B) informed the Range Forest Officer, Kopargaon that while excavating soil they did not disturb any trees and also that they did not find any sign board or demarcation indicating existence of forest land in the vicinity. Even the names of the present applicants were not

given in the FIR. According to the learned counsel, applicants are ready to co-operate the Investigating Officer and therefore, the present application may be allowed.

4. Mr. A. V. Deshmukh, learned APP for the respondent – State, invited my attention to the contents of the FIR and pointed out that the applicants were not only found on the spot but also when confronted they fled away from the spot. There was theft in respect of *Murum* and then further invited my attention to the spot panchnama. According to learned APP, the identification parade is yet to be done and for this, the custodial interrogation of these applicants is very much necessary. This being so, the application deserves to be rejected, argued learned APP.

5. It is true that at the time of lodging of report the names of present applicants were nowhere mentioned, however, during the course of investigation it transpired that these applicants were very much present when they were found excavating the forest land by cutting the trees. At the same time it is also pertinent to note here that they immediately on 30.08.2019 informed the Range Forest Officer, Kopargaon that with due permission in written from Tahsildar Kopargaon, they had commenced deepening of Jawalke Nala and used the

extracted soil / Murum for embankment construction in the prestigious Samruddhi Mahamarg package 11 Project. Company further informed that while doing so they did not disturb any trees during soil extraction and also did not find any sign board or demarcation indicating existence of forest land in the vicinity.

6. What appears from the above letter is that on 30.08.2019 the Company fairly admitted of having excavated soil / Murum in ignorance of the fact whether the said land was belonging to forest department or not with an explanation that there was no sign board or demarcation indicating existence of forest land. Learned counsel for applicants also during the course of argument fairly conceded that they might have encroached forest land inadvertently but the fact remains that the alleged incident took place in the year 2019 and the charge-sheet has already been filed. Still, according to learned counsel for the applicants, they are ready to co-operate the Investigating Officer.

7. Having regard to the above facts and circumstances, it is pertinent to note that the alleged incident took place in the year 2019. In my considered opinion no purpose will be served if the applicants are taken into the custody and put

behind the bars. At the most certain conditions can be imposed upon them while allowing the present application.

8. In view of above, I pass the following order :

**ORDER**

- (i) Application is allowed.
- (ii) In the event of arrest of the applicants – Dunga Tatarao S/o Rama Jogi Nayadu and Pitambar Naryan Jena herein in connection with Crime No.O-8 of 2019, registered with Kopargaon Police Station, District Ahmednagar for the offences punishable under Sections 143, 144, 149, 353, 395, 411 read with Section 34 of the Indian Penal Code, 1860, Section 26(1)A, G, D, F, H and 63(k) of the Indian Forest Act, 1927, Sections 2, 9, 51 of Indian Wild Life Protection Act, 1972, Section 3 of Indian Conservation Act, 1980 and Biological Diversity Act 2002 etc., the applicants are directed to be enlarged on bail on their furnishing P.R. Bond of Rs.25,000/- [Rupees Twenty Five Thousand only] each, with one or two sureties in the like amount.
- (iii) The applicants shall attend concerned police station as and when called by the Investigating Officer.
- (iv) The applicants shall not indulge in same kind of activities.
- (v) Application is accordingly disposed off.

**( V. G. BISHT )**  
**JUDGE**

shp/-