

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 685 OF 2021

1] Hayatkhan Dilawarkhan Pathan,
Age 52 years, Occ. Agril.

2] Samirkhan Hayatkhan Pathan,
Age 26 years, Occ. Agril.

3] Ajijkhan Hayatkhan Pathan
Age 23 years, Occ. Agril.

.. Applicants.

Versus

The State of Maharashtra
through Investigation Officer,
Bhingar Camp Police Station,
Ahmednagar.

.. Respondent.

Mr. S.V. Dixit, Advocate for the applicants,
Mr. V.M. Kagne, APP for respondent.

CORAM : V.G. BISHT, J.

ORDER RESERVED ON: 20th August.2021.

ORDER PRONOUNCED ON : 31st August, 2021.

PER COURT:

1] This is an application under Section 438 of Cr.P.C. preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No. 0186 of 2021, registered with Police Station, Bhingar Camp Police

Statio, Ahmednagar for the offences punishable under Sections 353, 379, 324, 143, 149, 323, 504, 506, 186 of IPC and Sections 48(7) and 48(8) of the MLR Code and Sections 3, 5 and 15 of the Environment Protection Act.

2] It is the case of the prosecution that on 24.5.2021, the informant (Talathi) got secret information through his informer that illegal excavation of Murum is going on with the help of JCB bearing Registration No. MH-16 BZ 8653 alongwith Dumper bearing Registration No. MH-13, AX/4016, at Survey No. 29/1 situated at Burhan Nagar. Informant alongwith Kotwal went there and found that the excavation was going on. When he confronted the driver of JCB and dumper, as to whether he had any permit for excavation of minor minerals, he replied in negative. Accordingly, the informant apprised the said fact to the Tahsildar, who in turn, deputed the Naib Tahsildar, clerk and other staff members. A panchanama was accordingly prepared and it was found that around 3008 brass of excavation of minor minerals had been done, amounting to Rs. 2,37,63,200/-.

3] The prosecution alleges that when the said vehicles were being taken to Tahsil Karyalaya, all the applicants alongwith Isarkhan Bibankhan Pathan threatened, obstructed and pushed the informant and said kotwal and took away the JCB and dumper.

4] Mr. Dixit, learned counsel for the applicants, submits that the applicants are co-owner of land Survey No. 29 situated in Burhan Nagar, Ahmednagar and have got share in the property. According to learned counsel, a civil suit in respect of the same was filed, which was though dismissed, an appeal bearing Regular Civil Appeal No. 303 of 2000,

impugning the judgment of the trial court was allowed by the learned District Judge, Ahmednagar and it was held that the father of the applicants has share in the said survey number. The execution proceeding of the same is now pending.

5] The learned counsel then submits that although it is alleged that the applicants were found excavating Murum illegally, in plot No. 29/1, in fact, no such plot is in existence. The learned counsel also invited my attention to certain documents filed on record, particularly, letter addressed to S.D.O. Ahmednagar, requesting therein that the conversion of plot bearing Gat No. 29 into forged Gat No. No. 29/1, 29/2 and so also, in respect of Gat No.30/1 to 30/4 be cancelled and it be restored as Gat Nos. 29 and 30. So, apparently, it is not the case that at the relevant time, when the incident allegedly took place, there was no Gat number as 29/1 in existence, as claimed by the learned counsel for the applicants.

6] The learned counsel then next submitted that a bare perusal of FIR would indicate that there are no allegations of transportation of minor minerals by the applicants and in such circumstances, the applicability of Section 379 of IPC is ruled out. So also, the FIR makes reference to offence under Section 48(7) and 48(8) of the Maharashtra Land Revenue Code, 1966 ("MLR Code" for short), still, these sections no way contemplate an offence or punishment of offence.

7] The learned counsel then lastly submitted that there is no recovery to be made and as such, there is no necessity of custodial interrogation. The applicants being reputed persons having immovable property, there is least likelihood that they would abscond or misuse the

liberty, if released on anticipatory bail.

8] Mr. Kagne, learned APP, read out the contents of the FIR and emphasized the use of criminal force against the informant and other public servants, who were discharging official duties. The learned counsel also invited my attention to the 7 x 12 extract forming part of the investigation papers and would submit that contention of the learned counsel for the applicants that no such Gat No.29/1 is in existence is clearly incorrect. The learned APP also impressed upon me that since the applicants had allegedly taken away excavator and dumper, their custodial interrogation is necessary. Having regard to the gravity of the offence, the application is liable to be rejected, argued learned APP.

9] First of all, what is relevant to note from the judgment of the learned District Judge in RCA No. 303 of 2000 is that the father of the applicants has share in the said property. The finding of the learned District Judge is neither stayed nor assailed before the Appellate Authority. It is also not in dispute that the Execution Proceeding in respect of said property is pending between the parties. Thus, one thing is clear that the applicants are having share in Gat No.29.

10] It is also clear from the application/representation made by the father of the applicants that Gat No. 29 was wrongly converted into Gat Nos. 29/1, 29/2, and so also, Gat No.30 into 30/1, 30/2, 30/3 and 30/4.

11] The allegations which can be perceived from the FIR are three-fold. Firstly, that when the informant visited Gat No. 29/1, he found work of excavation in progress. When the driver was confronted

as to whether he has permit, he replied in negative. Secondly, the informant and others noticed that around 3008 brass of Murum was removed after excavation. Thirdly, when the informant and others were taking away the JCB and Dumper to the Tahsil Karyalaya, they were subjected to criminal force at the hands of the applicants.

12] The learned APP, during the course of arguments, invited my attention to the spot panchanama, which was prepared at the place of incident. A perusal of that panchanama would show that informant and others noticed around 5 pits having different dimensions and on the basis of that, they concluded that around 3008 brass of Murum had already been removed from the said Gat No.29. What is clear from the above panchanama is that, those 3008 brass of Murum had already been removed and it was not the case that after excavation, particular quantity of Murum was stored on the spot of the incident itself. Merely because they had noticed certain pits and on the basis of their dimensions, they notionally calculated the amount of Murum which might have been removed from the said Gat No.29. This being a material fact, will have to be tested by evidence and cross-examination.

13] It is not the case of the prosecution that the applicants, after excavation of minor minerals, were found transporting by means of those vehicles and thus, committed the offence of theft. Incidentally, it may also be worth pondering that Section 48(7) and 48(8) of the MLR Code have been slapped. If those sections are read carefully, sections nowhere contemplate offence or punishment of offence. All that sections provide is power of authority to impose penalty and seize illegally excavated minor minerals. In the facts and circumstances of the case, prima facie, the alleged act would not amount to a mining activity so as to attract the wrath of said provisions.

14] Apart from the above, in the instant case, in my considered opinion, no recovery is required to be made from the present applicants and, therefore, there is no necessity of applicant's custodial interrogation. This being so, I am inclined to allow the application, with certain conditions.

: O R D E R :

[I] In the event of arrest of the applicants in connection with Crime No. 0186 of 2021, registered with Police Station, Bhingar Camp Police Station, Ahmednagar for the offences punishable under Sections 353, 379, 324, 143, 149, 323, 504, 506, 186 of IPC and Sections 48(7) and 48(8) of the MLR Code and Sections 3, 5 and 15 of the Environment Protection Act, the applicants be enlarged on bail on their furnishing PR Bond in the sum of Rs. 20,000/-, each with one or two sureties in the like amount.

[II] The applicants shall attend the concerned police station as and when called and shall cooperate with the police in the investigation.

[III] They shall not tamper with the evidence.

15] The application stands disposed of in aforesaid terms.

**[V.G. BISHT]
JUDGE.**

grt/-