

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

922 ANTICIPATORY BAIL APPLICATION NO.1152 OF 2021

SAMADHAN HEERA POTFODE
VERSUS
THE STATE OF MAHARASHTRA

WITH

922 ANTICIPATORY BAIL APPLICATION NO.1264 OF 2021

KIRAN RAMESH LAHARE
VERSUS
THE STATE OF MAHARASHTRA

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

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

DATE : 15-12-2021

ORDER :

1. The applicants are apprehending arrest in CR No.248/2021 registered with Gondi Police Station, District Jalna for the offences punishable under Sections 379 read with Section 34 of the Indian Penal Code and under Sections 48 (7) and (8) of the Maharashtra Land Revenue Code, 1966.

2. The case of the prosecution is that, on 5th July 2021, the informant / Talathi at Mauje Sasta Pimpalgaon alongwith others had been to Godavari river bed to inspect the spot from where there was theft of sand. When they reached there, they found 14 tractors and

some people were loading sand therein illegally. Those persons immediately ran away from the spot with tractors. Informant and others then inspected the spot at Gut No. 444 and Gut No. 446 and found that there was illegal excavation of 44 Brass sand. The persons who fled away had offloaded the sand on the way which was seized under panchnama. First Information Report was registered. It is also alleged that the panchas had identified and named the persons who ran away from the spot. The applicants are the persons who were named by the panchas.

3. The applicants had preferred application for anticipatory bail before the Sessions Court, which has been rejected.

4. The learned Advocate appearing for the applicants in all these applications submitted that the applicants are falsely implicated in this case. The panchas had allegedly named the applicants on account of political rivalry. The applicants are not concerned with excavation of sand. The tractors allegedly used in excavation of sand do not belong to the applicants. There is no witness to the incident except Talathi and panch witnesses. The co-accused Santosh Ankush Natkar, who is also named in the F.I.R. as a person who was present at the spot of incident and managed to flee away, has been granted anticipatory bail by this Court vide order 7th September 2021.

5. Learned A.P.P. submitted that there were no witnesses since the villagers had not come forward. Panch witnesses, therefore, identified the persons who were involved in the theft of sand. Supplementary statement of the informant was recorded in which it is stated that there was theft of 100 Brass of sand. Investigation is in progress. The applicants are named by the panch witnesses. Their custodial interrogation is necessary.

6. Undisputedly, no person was apprehended at the spot. They had allegedly managed to flee away from the spot. There are no independent eye witnesses. Surprisingly the panch witnesses themselves, who were called for preparing panchnama of the spot, are shown to be the persons who had given names of the accused. In the F.I.R. the quantum of sand was shown to be 44 Brass whereas in the supplementary statement it was alleged that it was 100 Brass. The sand was allegedly recovered from the spot. The accused had allegedly managed to run away with their tractors. Except identification by the panch there is no other cogent evidence to support the prosecution case. The co-accused Santosh Natkar has been granted anticipatory bail by this Court. While allowing the said application by order dated 7th September 2021, it was observed that it is not disputed that the stolen sand was recovered. Nothing is to be recovered or seized from the custody of the accused.

7. In view of the above, the applicants need not be subjected to custodial interrogation. Hence, the following order.

ORDER

- (i) ABA No. 1152 of 2021 and ABA No. 1264 of 2021 are allowed.
- (ii) In the event of arrest of the applicants in CR No. 248/2021 registered with Gondli Police Station, District Jalna, the applicants be released on bail on executing P.R. Bond in the sum of Rs. 20,000/- each with one or more sureties in the like amount.
- (iii) The applicants shall appear before the Investigating Officer on 27-12-2021, 28-12-2021 and 29-12-2021 between 11.00 a.m. and 1.00 p.m. and thereafter as and when called for, till filing of the charge-sheet.

8. Both the applications stand disposed of.

(PRAKASH D. NAIK, J.)

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