

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1442 OF 2021

Hasim Chand Pathan

Age : 42 years, occ : business

R/o Gajraj Nagar, Nagar -

Aurangabad road, Ahmednagar

Applicant

Versus

The State of Maharashtra

Respondent

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Mr. S.V. Dixit, Advocate for the applicant.

Mr. A.V. Deshmukh, A.P.P. for respondent – State.

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

DATE : 10-12-2021.

ORDER :

1. The applicant is seeking anticipatory bail in Crime No.453/2021 registered with Ahmednagar Camp Police Station, District Ahmednagar for the offences punishable under Sections 353, 341, 504, 506 read with Section 34 of the Indian Penal Code (for short "I.P.C.") and under Section 15 of Environment Protection Act, 1986.

2. The case of the prosecution is that, complainant is working as Talathi. On 01.11.2021 complainant, Circle Officer Jeevan Sutar, Sanjay Maruti Salve (Kotwal) and Mahesh Shamrao Tambe (Kotwal) had proceeded on duty by their private vehicle. At about 6.30 a.m. they reached at Belheshwar Chowk. At about 7.00 a.m. they noticed tempo bearing registration No.MH-16-AF-4521 proceeding towards Burhannagar – Belheshwar Chowk and turning

towards Bhingar. They signalled the driver of tempo to stop the vehicle. However, the tempo driver did not stop and proceeded towards Bhingar. Complainant and others chased the vehicle and intercepted the vehicle near Belheshwar temple. On inspection, they found that the tempo was carrying crushed stone. They inquired with the driver about permission for transporting stone. He stated that he does not have permission. At that time associate of the complainant Mr. Sutar climbed towards the driver's seat from the door. Driver speeded the tempo and proceeded towards Bhingar. Mr.Sutar was hanging at the door of the tempo and he was dragged by the driver of vehicle. Complainant and others then chased the vehicle and tried to stop it. However, the driver continued to drive the vehicle for a distance of about 400 metres. Mr. Sutar fell down on the road. The tempo driver then left towards Bhingar. Complainant and others continued to chase the tempo. While they had reached within jurisdiction of Burhannagar Grampanchayat, one person came on motorcycle and obstructed the vehicle of complainant. When they approached the said person, they were abused and threatened by him. The said person threw chilly powder in the eyes of Sanjay Maruti Salve and Mahesh Shamrao Tambe. People had gathered on the spot. Tempo driver speeded towards Kapurwadi. They could not intercept the tempo. Police arrived at the spot. Taking advantage of the crowd, the motorcycle rider fled from the place of incident. The number of motorcycle was noted. Inquiry was made with the people who had gathered there and they told the name of tempo driver and

motorcycle driver as Hanif Hasinbhai Pathan and Hasinbhai Chand Pathan, both residents of Amir Mala, Burhannagar. The offences were registered on 01.01.2021 under Sections 353, 341, 504, 506 read with Section 34 of I.P.C. and under Section 15 of Environment Protection Act.

3. Learned Advocate for the applicant submitted that the applicant has been falsely implicated in this case. He has not participated in the crime. Custodial interrogation of the applicant is not necessary. He is in the business of transport and in the past, vehicle of the applicant was seized by Revenue Officer and the applicant was constrained to approach the competent Court for release of vehicle by filing civil suit. In the said suit, application was filed for releasing the vehicle. The said application was allowed. In spite of direction by the Court for releasing the vehicle, the same was not released. Applicant had filed Miscellaneous Application against Tahsildar and Talathi. Having grudge of filing such application, Talathi has falsely implicated the applicant in the F.I.R. Applicant is not involved in the crime. Tempo of the applicant was stopped by informant and though it was informed that it is carrying crushed stone and it cannot be seized by Talathi, informant and others threatened the complainant of seizure of vehicle and also to register the F.I.R. against him under Section 353, 379 of I.P.C. On refusal to pay an amount of Rs. 15,000/-, goods of the vehicle were forcibly taken and were not returned. Applicant is falsely implicated. There is delay in registering F.I.R. Custodial interrogation of the

applicant is not necessary. The offence under Section 15 of the Environment Protection Act is not made out. The allegations about dragging the associate of the complainant are false. It is not supported by medical evidence. Reliance is placed on decision in the case of ***Bansilal Lunkaranji Chandak Vs. State of Maharashtra, AIR Online 2018 Bom 1466***. In the said decision it was observed that for carrying finished product of metal stone collected from stone crusher, no transport pass is required.

4. Learned A.P.P. submitted that there is sufficient evidence showing involvement of the applicant in the crime. The applicant was riding motorcycle and obstructed the complainant and others while discharging their duty. He facilitated escape of tempo driver. Crushed stones were transported in the tempo without licence. Investigation is in progress. Statements of witnesses are recorded. There are eye witnesses to the incident.

5. I have perused the investigation papers. Jeevan Sutar was hanging at the door of the tempo. The driver of the vehicle drove the tempo in full speed, while witness tried to enter into cabin of driver. He fell down while vehicle was speeding. Applicant and tempo driver were acting in connivance. Applicant had facilitated escape of the driver. Chilly powder was thrown in the eyes of associate of complainant. Jeevan Sutar was treated in District Hospital, Ahmednagar. The history provided is that he was hanging over the door while driver was rashly driving the truck. The statements of witnesses refer to the role played by the applicant and

co-accused. From the tenor of the application itself, it is indicated that the applicant was present at the scene of offence. It is contended by the applicant that the complainant and others had demanded amount from him. Although there was permission, they tried to remove the goods from the vehicle. The witnesses have stated that Jeevan Sutar fell down while the tempo driver did not stop and speeded the vehicle.

6. There is sufficient evidence to show involvement of the applicant. The applicant has committed offence under Section 353 of I.P.C. The decision relied upon by the applicant was disbelieved in facts of that case. No case is made out for granting anticipatory bail. Hence, the order.

ORDER

ABA No. 1442 of 2021 is rejected and stands disposed of.

(PRAKASH D. NAIK, J.)

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