

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.989 OF 2019

Dattatraya Ganpat Atole and others	Applicants
versus	
The State of Maharashtra	Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.969 OF 2019

Popat Dattu Devkate	Applicant
versus	
The State of Maharashtra	Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.1029 OF 2019

Pandurang Kisan Zagade	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Rupesh Zade, Advocate for applicants in ABA No.969 of 2019 and ABA No.1029 of 2019.

Mr.Ranjeet H. Patil, Advocate i/by Mr.Prashant Hagare, Advocate, for applicant in ABA No.989 of 2019.

Mr.R.M.Pethe, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 10th August 2021

PC :

1. The applicants are apprehending arrest in CR No.328 of 2019 registered with Baramati Taluka Police Station, Taluka Baramati, District Pune, for offences under Section 379 of Indian Penal Code and under Section 21(4) of Environment Protection Act, 1986.

2. The FIR was lodged on 1st April 2019. It was alleged that the complainant is working as Talathi at Tahsil Office, Baramati. Presently he is working as Village Talathi at village Shirsuphal. Letter dated 28th March 2019 was received from the concerned department for initiating action relating to unauthorized sand excavation from the lake situated at village Shirsuphal and to control the unauthorized excavation. Meeting was arranged of the office bearers of village Shirsuphal consisting of Sarpanch/President of village, Gram Sevak, Police Patil, Kotwal (Peon) and complainant on 25th March 2019. It was pointed out to the committee that accused Dattatraya Atole, Ganesh Gadhave, Pandurang Zagade, Vitthal Gadhave, Vishal Gawade, Popat Devkate, Ganesh Hivarkar, Appa Zagade, Sagar Gadhave are indulging in excavation of sand from the lake at Shirsuphal. The complainant visited the spot and noticed that due to excavation of sand, pits were developed at various places in the lake. Panchanama in that regard was recorded. It was noticed that accused had excavated sand, the details of which are mentioned in the FIR. The panchanama in that regard was recorded.

3. The applicants preferred application for anticipatory bail before Court at Baramati. The applications were rejected by order dated 16th April 2019. The applicants were granted interim protection by this Court vide order dated 24th April 2019 and 23rd April 2019. The applicants were directed to report Investigating Officer.

4. Learned counsel for applicant Mr.Patil and Mr.Zade submitted that the FIR is false. There is no recovery of sand at the instance of applicants. There is no eye witness to the incident supporting the

fact that applicants have excavated the sand. Show cause notice was issued to the applicants with regards to the excavation of sand and the reply was forwarded in that regard. The applicant Dattatraya Atole had lodged an FIR prior to registration of present FIR in question against Mahesh Atole, Sanjay Atole, Keshav Shelar on 28th March 2019 for offences under Sections 327, 384, 323, 504, 506, 34 of Indian Penal Code. Only on the basis of surmises the applicants cannot be subjected to custodial interrogation.

5. The Investigating Officer has filed affidavit dated 20th January 2020 and 20th July 2021. In the affidavit it was alleged that the panchanama was prepared by village Talathi on the spot of incident which mentioned that pit was noticed after excavation of sand. The villagers had seen the accused taking away sand. The complaint was lodged by press reporter on 28th March 2019 alleging that he was not allowed to take video shooting at the time of commission of offence. There are criminal antecedents against some of the applicants. In the affidavit dated 20th July 2021 it was alleged that the applicant Ganesh Gadhave had shown pistol to Mahesh Atole. Learned counsel for applicants submitted that against the said reporter one of the applicant had lodged the FIR No.3 of 2019. The applicants have attended Investigating Officer. Their custodial interrogation is not necessary.

6. Learned APP submitted that except applicant in ABA No.1029 of 2019, all other applicants have attended concerned Police Station.

7. The investigation is going on since 20th March 2019. There is no recovery of sand at the instance of any of the accused. There is

no recovery of sand at any place showing that the applicants have excavated the sand. The applicants have attended the concerned Police Station. The applicant in ABA No.1029 of 2019 can be directed to attend Police Station. Hence, I pass following order :

ORDER

- (i) Anticipatory Bail Application Nos.989 of 2019, 969 of 2019 and 1029 of 2019 are allowed and disposed of;
- (ii) Interim orders dated 24th April 2019 and 23rd April 2019 are confirmed;
- (iii) In the event of arrest of applicants in CR No.328 of 2019 registered with Baramati Taluka Police Station, Taluka Baramati, District Pune, all the applicants be released on bail on their executing PR bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (iv) The applicant in ABA No.1029 of 2019 shall report the Investigating Officer on 12th, 13th and 17th August 2021 between 11 am and 1 pm;
- (v) All the applicants shall appear before the Investigating Officer as and when called for till filing of charge sheet.

(PRAKASH D. NAIK, J.)

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