

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 755 OF 2021

Vikas s/o Ekath Bhalerao
..vs..
State of Maharashtra, thr. P.S.O.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri T. Deshpande, Advocate for applicant.
Shri V.A. Thakre, A.P.P. for non-applicant/State.

CORAM : VINAY JOSHI, J.
DATED : 14/12/2021

Heard.

2. In anticipation arrest in Crime No.915 of 2021 registered with Hinganghat Police Station, District Wardha for the offence punishable under Sections 353, 294, 143, 144, 147, 148, 149, 506(2), 379 of the Indian Penal Code and Sections 4 and 24 of the Arms Act, the applicant has prayed for pre-arrest protection.

3. At the instance of report lodged by Talathi, crime was registered. It is the prosecution case that at the relevant time, it was noticed that two tractors were illegally carrying sand hence, they were intercepted. On inquiry it was learnt that one of the tractor was owned by applicant Vikas Bhalerao. Then the informant stated further instance regarding alleged threat and forcibly taking away the tractors in which no role is assigned to the applicant.

4. Perusal of entire report indicates that the

applicant was not present at the time of occurrence, but he was owner of one of the tractor, which was illegally carrying sand. Learned Counsel for the applicant pointed that co-accused Diliprao Kahurke has been protected by this Court vide its order dated 23.11.2021 in Criminal Application No.747 of 2021.

5. The non-applicant/State resisted bail by filing reply-affidavit. It is contended that the applicant is a habitual offender against whom two prior crimes were registered. Moreover, the instances of illegal excavation of sand are at rise and therefore, investigation is necessary. As aforesaid mentioned, the applicant was not present on the spot. The offence under Section 353 *prime facie* does not attract against the applicant. It is a matter of evidence whether the applicant was involved in illegal excavation. It is brought to the notice that out of two prior crimes, the applicant has been acquitted in one of the crime vide judgment and order dated 25.07.2018. Though two prior instances are coated, in absence of convincing material of existing crime, applicant's liberty cannot be curtailed. In view of that the applicant has made out a case for grant of pre-arrest protection. Hence, the following order :

- (a) Criminal Application stands allowed and disposed of accordingly.
- (b) Ad-interim order dated 05.11.2021 passed by this Court is hereby made absolute upon same terms and condition.

- (c) The applicant/accused shall continue to attend concerned Police Station till filing of the charge-sheet or for the period of 60 days whichever is earlier.
- (d) The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

JUDGE

Trupti