

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

929 ANTICIPATORY BAIL APPLICATION NO.31 OF 2022

AKSHAY MANOHAR PAWAR

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. A.S. More, Advocate for the applicant

Mr. V.M. Kagne, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 01st FEBRUARY, 2022.

ORDER :

1 Applicant is apprehending his arrest in connection with Crime No.329/2021 dated 12.12.2021 registered with Osmanabad City Police Station, Dist. Osmanabad, for the offence punishable under Section 379 of the Indian Penal Code, 1860 and under Section 21 of Mines and Minerals Act.

2 Heard learned Advocate Mr. A.S. More for the applicant and learned APP Mr. V.M. Kagne for the respondent. In order to cut short it can be said that they have argued in support of their respective contentions.

3 Perusal of the First Information Report that has been lodged by

Narayan Nagtilak serving as Circle Officer at Dhoki/Yedshi would show that he was present at Yedshi Toll Naka at about 12.10 p.m. on 12.12.2021 with his colleagues. He received information from Tahsildar that they should immediately reach to Hambire Petrol Pump near Tuljapur Road, Osmanabad and, therefore, the entire team went near petrol pump. Tahsildar, Osmanabad was present and he disclosed that a Tipper bearing No.MH-25-U-5295 was seen illegally excavating murum (powdered rock) and transporting it. When he had tried to stop the vehicle, the said Tipper filled with murum went towards Ganesh Nagar. He had chased that, but that Tipper driver had then thrown the murum on road from moving Tipper and ran towards Tuljapur. When it was found that he was chasing the Tipper, a motorcycle bearing No.MH-25-AG-6687 was brought in such a manner before his vehicle that would create hurdle for him to chase and then the motorcycle driver left the motorcycle at that place and fled away. Tahsildar then asked Circle Officer and Talathi to prepare panchnama and carry out the legal procedure and, therefore, with the motorcycle Circle Officer went to Police Station and lodged the report. Thus, it can be seen that whatever has been stated in the First Information Report is hearsay. What was the problem for Tahsildar, Osmanabad to lodge the report has not be explained. Why he has assigned the said job, when he himself had allegedly seen and noted the numbers of the vehicles and the obstruction was caused to him, is a question.

4 Learned APP submitted that applicant is the owner of Tipper, whereas one Suresh Fulchand Pawar appears to be the owner of motorcycle. Therefore, there is involvement of present applicant in the said crime.

5 At the outset, interesting point to be noted is that the incident is stated to have taken place on 12.12.2021 and the statement of Tahsildar Ganesh Mali, who had noted the number and who was obstructed, is recorded on 22.12.2021. There is absolutely no whisper in his statement as to why he could not lodge any report regarding the said incident on the same day. So also, we are unable to get from the say of the Investigating Officer, as to why there is delay in recording the statement of Tahsildar Ganesh Mali. From his statement, he has not seen the person who was driving the said vehicle. He only refers to him as driver of the Tipper. The description of the driver has not been stated. Therefore, even if we take that vehicle might be in the name of present applicant on the RTO record; he would have been driving the said vehicle at the relevant time. Therefore, the physical custody of the applicant is not required. Interim protection granted by this Court required to be confirmed. Accordingly, it is confirmed.

ORDER

1 Application stands allowed.

2 The ad-interim protection, granted by this Court earlier to applicant vide order dated 17.01.2022, is hereby confirmed and made absolute. In other words, if the applicant is not formally arrested, in the event of arrest of the applicant viz. Akshay Manohar Pawar, in connection with Crime No.329/2021 dated 12.12.2021 registered with Osmanabad City Police Station, Dist. Osmanabad, for the offence punishable under Section 379 of the Indian Penal Code, 1860 and under Section 21 of Mines and Minerals Act, he be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

3 The applicant shall not indulge in any criminal activity nor he should tamper with the evidence of the prosecution, in any manner.

4 Applicant shall cooperate with the investigation and shall attend City Police Station, Osmanabad, Dist. Osmanabad, daily, between 11.00 a.m. to 04.00 p.m., till filing of charge sheet.

(Smt. Vibha Kankanwadi, J.)