

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.113 OF 2022

Abasaheb Balasaheb Warkhade

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENTS

...
Mr.Satej S. Jadhav Advocate for Applicant.
Mr.V.M. Kagne, A.P.P. for Respondent-State.
...

DATE OF RESERVING ORDER : 24th FEBRUARY 2022

DATE OF PRONOUNCING ORDER : 6th APRIL 2022

WITH

ANTICIPATORY BAIL APPLICATION NO.135 OF 2022

Abasaheb Balasaheb Warkhade

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENTS

...
Mr.Satej S. Jadhav Advocate for Applicant.
Mrs.Vaishali Patil-Jadhav, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 28th FEBRUARY 2022

DATE OF PRONOUNCING ORDER : 6th APRIL 2022

ORDER :

1. Applicant in both the Applications is the same though he is apprehending his arrest in two different offences. Though these two Applications were heard on different dates, as applicant in both the Applications is same, these Applications are taken together for decision.

2. In Anticipatory Bail Application No.113 of 2022, applicant is apprehending his arrest in connection with Crime No.895 of 2021 registered with Rahuri Police Station, District-Ahmednagar for the offence punishable under Sections 353, 332, 336 of the Indian Penal Code; whereas in Anticipatory Bail Application No.135 of 2022, applicant is apprehending his arrest in connection with Crime No.1056 of 2021 registered with the same Police Station, for the offences punishable under Sections 379,

447, 427, 504, 506 read with Section 34 of the Indian Penal Code.

3. Heard learned Advocate Mr. Satej Jadhav for the applicant in both the Applications and learned APP Mr. Kagne and learned APP Mrs. Jadhav-Patil for the respondent – State in respective Applications. In order to cut-short, it can be stated that both the sides have made submissions in support of their respective contentions.

4. First Information Report (for short "FIR") in Anticipatory Bail Application No.113 of 2022 has been lodged by Police Constable Laxman Dattatraya Khedkar attached to Rahuri Police Station. On 25th October 2021 at about 7.30 a.m., they came to know that the present applicant, who was externed from that area, has come within the premises of Rahuri Factory in red colour Brezza vehicle bearing No.MH-17-BX-903. The Police party went to the said place around 7.49 a.m. and they could find such vehicle coming. The informant and one another Police person, namely, Rohit Palve went near the said vehicle to see who is the occupant of the vehicle. They could find that he was the present applicant. They asked him to get down from the vehicle, however the applicant did not do that and started the

vehicle and put the vehicle in reverse gear and then he started to go. Then informant and other Police person tried to obstruct him but then the informant was pushed from the window of the vehicle, as a result of which he fell down and received injuries. The applicant fled away from the said spot. The informant, after getting preliminary treatment, lodged the report.

5. The FIR in Anticipatory Bail Application No.135 of 2022 has been lodged by one Janabai @ Suman Balasaheb Waghmode, who is the owner of Gat No.209 ad-measuring 4 Hectare 86 R land situated at Ganegaon Shivar. She has stated that out of the said land, 2 Acre is barren land. She resides with her husband and since husband had undergone operation for his eyes, they had gone to their son at Aurangabad. They returned to village on 12th December 2021. They went to field on 14th December 2021 and found that huge ditches have been created in the barren portion of their land. *Murum* from that area was excavated without her permission. She made inquiry and came to know that about 3 to 4 days prior to that day, somebody had illegally entered her field and with the help of J.C.B., excavated the *Murum* at night time. She had made complaint application regarding the same. Thereafter on 28th December 2021 once again she had gone to the field. She found one J.C.B., one

dumper and four persons in her field. The J.C.B. driver was excavating the *Murum*. She asked as to whom the said J.C.B. belongs. The driver told that it belongs to the present applicant and it was also told in the manner that those are the vehicles of *Bhai*. When informant and her husband asked as to the name of the driver, he abused and threatened them and fled away. The other persons also fled away from the spot.

6. Learned Advocate appearing for the applicant has submitted that in both the cases the custodial interrogation of the applicant is not necessary. In fact applicant was not at all present at the spot. He is not the owner of both the vehicles involved in both the FIR's. It would have been hard to believe that in the dark of night applicant could have been immediately identified. In fact the applicant had filed application with Superintendent of Police, Ahmednagar seeking permission to enter the area to appear on the dates fixed in R.C.C. No.88 of 2015, which is pending against him before the learned J.M.F.C., Rahuri. When he was adopting the legal method, he would not have dare to enter the area without seeking permission. Learned counsel further submits that in another case applicant has been falsely implicated only on the basis that J.C.B. operator has

taken his name. The applicant is ready to abide by the terms of the bail.

7. Per contra, the learned APP has submitted that the applicant is involved in all seven offences including the two before this Court. One of the case is under Sections 307, 324, 323 etc. of the Indian Penal Code and two are under Section 395 of the Indian Penal Code and another one is under Section 394 of the Indian Penal Code. The applicant along with his associates, have created the terror in the area. He is a sand Mafia and with the help of his team members he is doing the illegal excavation of the sand and *Murum* around Rahuri area. He does not deserve to be released on bail.

8. Taking into consideration the contents of both the FIR's, as regards Crime No.895 of 2021 lodged by Police Constable, it is certain that he had identified the present applicant. The FIR does not say that the incident had taken place at the night time. What has been stated about time is "at 7.30". Whether it was p.m. or a.m. is not written in the FIR, but the way the time is written by Police persons, it should be day time. If it is after the afternoon till mid-night, then they would write as 13 hours, 14 hours to 24 hours. Definitely the informant had the knowledge that the

present applicant was externed. There was no reason for the informant to implicate the present applicant.

9. In second complaint also the old lady has no enmity with the present applicant. When it was found by her that the *Murum* from her land has been illegally excavated, she has made complaint, firstly it was against unknown persons. But then, when she found the J.C.B., dumper and four persons in her land on 28th December 2021, she made the inquiry. The J.C.B. driver has given the name of the present applicant.

10. Taking into consideration the criminal back-ground of the applicant, he does not deserve the extraordinary discretionary relief.

11. Accordingly, both the Applications stand rejected.

[SMT. VIBHA KANKANWADI , J.]