

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.905 OF 2022

HABIB HUSAIN SALECHAUS AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Sudarshan J. Salunke
APP for Respondent : Mr. S. B. Narawade
...

CORAM : S. G. MEHARE, J.

DATE : 27-07-2022

PER COURT :-

1. Heard the learned counsel for the applicants and the learned APP for the respondent/State.
2. The prosecution has a case that, on 20.05.2022 the Hyva truck owned by applicant No.1. The applicant No.2/driver was found carrying excess quantity of the sand than the royalty pass. Therefore, the Revenue Officer seized the Hyva vehicle and brought to it to the campus of Tahsil Office, Palam. The notice demanding the payment of amount Rs.18,89,420/- was served on the applicants on 20.05.2022. Thereafter, the report was lodged on 24.05.2022. It is also alleged against the applicants that they have stolen the said Hyva from the campus of Tahsil office.
3. It is argument of the learned counsel for the applicants that the Hyva in question was never seized and stationary in the

campus of Tahsil Office, Palam. The applicant No.1 is the owner of the Hyva. He also replied the notice dated 20.05.2022. In that reply also he has taken the same stand that the Hyva in question was never seized. However, the applicants have an apprehension that due to the political rivalry, the Revenue Officers have been instigated and the false report has been lodged against them. The prosecution has no case for the custodial interrogation of the applicants.

4. Per contra, the learned APP has vehemently argued that the seizure panchnama of the Hyva in question was prepared on 25.05.2022. The notice dated 20.05.2022 has been replied after the present FIR was registered against the applicants. The applicants must have learnt that the offence against them has been registered, therefore, the applicants took brilliant defence that some political rivals people instigating the public servants to lodge a false report against them and vehicle was not seized. The amount of penalty has not been deposited to date. Once the property is seized under the Mines and Minerals Act or under Section 48 of the Maharashtra Land Revenue Code, that property is liable to be confiscated and such property becomes Government property. A direct report against the applicants has been lodged that they have stolen the Hyva, which was seized. That Hyva is to be recovered from the applicants. The offence is serious. Therefore, the custodial interrogation of the applicants is essential.

5. Perused the papers and the application. *Prima facie* the prosecution has evidence that the Hyva in question was seized with sand on 20.05.2022. Naturally, after the seizure, the Hyva must have been taken in the custody by the public servant. There is no ground to disbelieve the complainant that after seizure of the Hyva, it was taken to the Tahsil Office and parked there. The notice dated 20.05.2022 was replied on 25.05.2022. It is apparently after lodging the report dated 24.05.2022. The possibility of knowing about registration of the crime against the applicants cannot be ruled out. After the crime was registered against the applicants, they have come with a defence by way reply to the notice dated 20.05.2022 that the Hyva was never seized. This appears a after though defence. The fact remains that the property seized by the Government has been stolen. The report is directly lodged against the applicants. There appears a force in the arguments of the learned APP that the Hyva is to be recovered. Therefore, the custodial interrogation of the applicants is essential.

6. For the above reasons, the application stands dismissed.

(S. G. MEHARE)
JUDGE