

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1504 OF 2021

SHARAD S/O DATTATRAYA KHOTE
VERSUS
THE STATE OF MAHARASHTRA

...

WITH
ANTICIPATORY BAIL APPLICATION NO.1437 OF 2021

SANDIP BHAUSAHEB KADAM
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. S. E. Shekade, Advocate for the applicant in ABA/1504/2021.
Mrs. M. V. Narwade, Advocate for the applicant in ABA/1437/2021
Mr. A. M. Phule, APP for the respondent – State in both the cases.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 11.01.2022

Pronounced on : 28.01.2022

PER COURT :-

1. Heard learned Advocate Mr. S. E. Shekade for the applicant in ABA No.1504 of 2021, learned Advocate Mrs. Manjushri V. Narwade for the applicant in ABA No.1437 of 2021 and learned APP Mr. A. M. Phule for the respondent – State.

2. Applicants are apprehending their arrest in connection with Crime No.436 of 2020 registered with Ashti Police Station Dist. Beed, lodged by one Shivshankar Gangadhar Singanwad, for the offence punishable under

Sections 353, 341, 379, 332 of Indian Penal Code and under Sections 21(1) and 21(2) of Mines and Minerals Act.

3. It has been vehemently submitted on behalf of the applicants that the applicants have been falsely implicated. No specific acts have been attributed to them, which could show that it was with an intention to support the main culprits, who had taken away the sand tractor. The revenue officers are stated to be on duty to curb illegal sand excavation and the informant, who is a Sub Divisional Officer, states that the applicant – Sharad was known to him. Merely because the applicant was present there, it appears that his name has been taken. There was no connection between the present applicants with the person, who was taking one brass of sand from the tractor. It is not the case of the prosecution that the applicants are the person who had committed theft of the sand. No such incident of using criminal force by applicant Sandip Kadam has taken place. Custodial interrogation of the applicants is not required for the purpose of investigation. They are ready to abide by the terms of the bail. Further, even if for the sake of argument, it is accepted that there is some substance in the FIR, the applicants are repenting for the act and would compensate to the State or any other institution.

4. Per contra, the learned APP has strongly opposed the application, on the ground that the contents of First Information Report and statements of

the witnesses recorded so far disclose specific role of the applicants. Informant is the public servant and knowing it well, still the applicants had used criminal force against him to deter him from doing his official duty. Offence is serious and there is *prima facie* evidence against the applicants. They does not deserve pre-arrest bail.

5. Perusal of the FIR would show that the informant is a revenue officer. He had gone to the spot along with the other revenue officer for taking action against illegal excavation. He states that after the team was seen two tractors, one was driven by one Sukhdev Dalvi having 1 brass of sand and another tractor started to run. The revenue officers had taken photograph of the same. The yellow colour JCB was asked to stop, however, there was no response from the driver, at that time, the applicant – Sharad along with another unknown person were present there. According to the informant, thereafter, they had asked the tractor of the driver of one blue colour Sonalika tractor to stop which was having 1 brass of sand. They asked the driver about his name and address and he told that his name is Akshay Pawar and the owner is Sharad Anarase. Thereafter, Talathi Mr. Pawne was asked to sit on the tractor and the tractor was being escorted to Tahsil office. When the tractor was near the house of one Digambar Jagtap, at that time, present applicants came on motorcycle bearing No.MH-23-AG-2082. They parked the two wheeler in such a way that would obstruct the tractor. Applicant – Sharad started disputing with

the informant and then applicant – Sandip dragged Talathi from the tractor and then he was manhandled. He was rescued by informant and Tahsildar Smt. Dalvi. When this incident was happening, said Akshay Pawar fled away from the spot along with the tractor. Thus, the *prima facie* fact stated would indicate involvement of the applicant. The acts indicated would give an impression that the main culprits fled away due to the act of the present applicants, however, at this stage, the police papers are not suggesting that there was a criminal syndicate. It is then stated in the police papers that the vehicles involved in the case may not be then available for seizure. It is also stated that as against applicant – Sharad, there is one more similar FIR i.e. Crime No.712 of 2020 under Section 379 of Indian Penal Code and Section 3 punishable under Section 15 of the Environment Act. The earlier FIR has not been annexed to the police papers, at this stage. If applicant – Sharad is a sand mafia, then the police should collect that evidence first and then brand anybody as mafia.

6. Taking into consideration the facts of the case, the physical custody of the applicants may not be required for the purpose of investigation and the purpose would be served, if attendance is given. The defence raised by the applicants need not be considered, at this stage, as they have to establish the same during the course of trial. However, it can certainly said that nobody should indulge in the act of deterring a public servant. Therefore, even while granting protection of pre-arrest bail to the

applicants, conditions deserve to be imposed on them. Hence, following order.

ORDER

I) Applications stand allowed.

II) The ad-interim protection, granted by this Court earlier to the applicant in ABA No.1504 of 2021 vide order dated 16.12.2021, is hereby confirmed and made absolute. In other words, in the event of arrest of applicant in ABA No.1504 of 2021 i.e. Sharad Dattatraya Khote, in connection with Crime No.436 of 2020 registered with Ashti Police Station, Dist.Beed, for the offences punishable under Sections 353, 341, 379, 332 of Indian Penal Code and under Sections 21(1) and 21(2) of the Mines and Minerals (Development and Regular) Act, he be released on P.R. Bond of Rs.20,000/- with one or more sureties in the like amount.

III) In the event of arrest of applicant in ABA No.1437 of 2021 i.e. Sandip Bhausaheb Kadam in connection with Crime No.436 of 2020 registered with Ashti Police Station, Dist.Beed, for the offences punishable under Sections 353, 341, 379, 332 of Indian Penal Code and under Sections 21(1) and 21(2) of the Mines and Minerals (Development and Regular) Act, he be released on P. R. Bond of

Rs.20,000/- with one or more sureties in the like amount.

IV) The applicants shall not indulge in any criminal activity. If any offence in future is registered against present applicants, then the prosecution is at liberty to apply for cancellation of bail

V) The applicants to deposit amount of Rs.20,000/- each to the High Court Legal Services, Sub Committee, Aurangabad within a period of one week.

[SMT. VIBHA KANKANWADI, J.]

scm