

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

ANTICIPATORY BAIL APPLICATION NO.1544 OF 2021

MUKHTAR KHA S/O HAIDARKHA PATHAN AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. P.P. More, Advocate for applicants

Mr. A.M. Phule, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 07th JANUARY, 2022

PRONOUNCED ON : 17th JANUARY, 2022

ORDER :

1 The applicants are apprehending their arrest in connection with Crime No.396/2021 dated 20.11.2021 registered with Badnapur Police Station, Dist. Jalna, for the offence punishable under Section 379 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. P.P. More for applicants and learned APP Mr. A.M. Phule 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 one Prashant Devidas Nikam, would show that he works for the contractor, who has taken contract of the road from Somthana to Dabhadi. They had iron barricades, clips, poles etc., which was on road at the time of construction work. He says that the construction of the road was completed. He had received phone call on 20.11.2021 from Badnapur Police Station that while they were patrolling at night time they could find that certain iron barricades and other articles were being loaded in Tata pick up vehicle bearing No.MH-21-X-3947. They had suspected that those persons were committing theft of those articles and, therefore, those persons along with vehicle were taken to Police Station. On inquiry it was noticed that the articles belong to the contractor and, therefore, he was called to the Police Station to identify the articles. He went there and found that articles were stolen by one Gajanan Haribhau Adsul and his associates. The articles along with the vehicle worth Rs.6,20,000/- were seized in the case.

4 It appears that in the inquiry with main accused Gajanan, he made a statement that the act has been done under the orders of these applicants and, therefore, present applicants are saying that they are apprehending their arrest.

5 Name of the present applicants are not appearing in the First Information Report. Their alleged role is stated by the co-accused. The police papers would show that since the name of the applicants were disclosed by accused Gajanan, the police are contending that they want to make investigation and their personal custody is necessary. As regards the disclosure of the name of co-accused by co-accused it can be said that it has no evidentiary value. At the most, from the said statement, after making certain investigation and connecting the accused, whose names have been taken, then, only the police can say that whether the custody of those accused is required or not for the purpose of investigation. It is to be noted that as against the applicant No.1 there are two offences registered with the same Police Station; one is under Section 379 of the Indian Penal Code and another under Section 324, 323 of the Indian Penal Code etc. As regards applicant No.2 is concerned, one offence under Section 379 read with Section 34 of the Indian Penal Code is registered against him with Karmad Police Station, Dist. Aurangabad. Merely because those offences are registered against them will not establish their connection with the present offence. Therefore, the application deserves to be allowed, however, conditions are required to be imposed. Hence, following order.

ORDER

1 Application stands allowed.

2 In the event of arrest of the applicants viz. 1) Mukhtar Kha s/o Haidarkha Pathan and 2) Ganesh Pralhad Dake, in connection with Crime No.396/2021 dated 20.11.2021 registered with Badnapur Police Station, Dist. Jalna, for the offence punishable under Section 379 read with Section 34 of the Indian Penal Code, 1860, they be released on P.R. of Rs.30,000/- (Rupees Thirty Thousand only) each with two sureties of Rs.15,000/- (Rupees Fifteen Thousand only) each.

3 The applicants shall not indulge in any criminal activity nor shall try to tamper with the evidence of prosecution, in any manner.

4 Applicants shall cooperate with the investigation and shall attend Police Station, Badnapur, Dist. Jalna on every Monday, Wednesday and Friday between 10.00 a.m. to 02.00 p.m., till filing of charge sheet.

(Smt. Vibha Kankanwadi, J.)