

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1612 OF 2021

MUDASSAR ABDUL @ HAJI KARIM QURESHI
VERSUS
THE STATE OF MAHARASHTRA

.....

Advocate for Applicant : Mr. S. S. Jadhav
APP for Respondent-State : Mr. N. T. Bhagat

.....

WITH

**CRIMINAL APPLICATION NO.3241 OF 2021
IN BA/1612/2021**

YATINDRA KANTILAL JAIN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....

Advocate for Applicant : Mr. A. N. Nagargoje
APP for Respondent No.1-State : Mr. N. T. Bhagat
Advocate for Respondent No.2 : Mr. S. S. Jadhav

.....

WITH

BAIL APPLICATION NO.1615 OF 2021

SHAKIR @ MONYA MOHAMMAD SHAIKH
VERSUS
THE STATE OF MAHARASHTRA

.....

Senior Counsel for Applicant : Mr. V. D. Hon i/b Mr. A. V. Hon
APP for Respondent-State : Mr. N. T. Bhagat

.....

WITH

**CRIMINAL APPLICATION NO.3240 OF 2021
IN BA/1615/2021**

YATINDRA KANTILAL JAIN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....

Advocate for Applicant : Mr. A. N. Nagargoje
APP for Respondent No.1-State : Mr. N. T. Bhagat
Senior Counsel for Respondent No.2 : Mr.V.D. Hon i/b Mr. A. V. Hon

.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving the Order :
21-12-2021**

**Date of Pronouncing the Order :
11-01-2022**

ORDER :

1. Criminal Applications No.3240 of 2021 and No.3241 of 2021 have been filed for assist to learned APP. Said applications are allowed and disposed of.

2. Applicants have been arrested in connection with Crime No.518 of 2021, registered at Sangamner City Police Station, District Ahmednagar, for the offence punishable under Section 269, 429 read with 34 of the Indian Penal Code, Section 5A, 5C, 9A, 9 of the Maharashtra Animal Preservation Act, 1976 Amended in 1995 and Section 3 and 11 of the Preservation of Cruelty to the Animal Act, 1960. They have filed present applications under Section 439 of the

Code of Criminal Procedure.

3. Heard learned Senior Counsel Mr. V. D. Hon instructed by Mr. A. V. Hon, learned Advocate Mr. S. S. Jadhav for applicants, learned APP Mr. N. T. Bhagat for respondent-State and learned Advocate Mr. A. N. Nagargoje for assist to learned APP.

4. It has been vehemently submitted by learned Senior Counsel Mr. V. D. Hon instructed by Mr. A. V. Hon for the applicant in Bail Application No.1615 of 2021 that the investigation is over and charge-sheet has been filed on 03-10-2021 and, therefore, the custody of the applicant is not required. As regards this applicant is concerned, admittedly he was not present at the spot when the informant who is police officer visited the spot. His name appears on Serial No.10 and as per the allegations in the charge-sheet, he had helped the accused No.1 to 9 to arrange the vehicle carrying cow meat in such a way that the water should not come out of the body of the vehicle. In fact, it does not amount to any kind of offence. Even if that allegation is taken as it is, it can be said that it has been made to order as required or contracted with the accused No.1 to 9. That *per se* does not presume that the applicant had any kind of *mens rea* to commit any such offence under which the

offence has been registered. Therefore, the applicant deserves to be released on bail.

5. Learned Advocate Mr. S. S. Jadhav appearing for the applicant in Bail Application No.1612 of 2021 submitted that the applicant has been shown as accused No.2 in the FIR. It has been contended that when the informant raided the slaughterhouse with his party at 09.30 p.m. on 02-10-2021, at that time the present applicant and accused No.1 Wahid Qureshi fled away from the spot and, thereafter, they found one Abidur Haq Abdul Jabbar/accused No.6 at the said place and he gave name of accused No.1. It is stated that cow meat, vehicle, 30 alive cattle, knives, weight etc. was found at the spot. Further, the another shed was raided from which some other articles were seized. Even in the charge-sheet except the statement that this applicant fled away after he saw police, there is nothing. When the investigation is over, the further physical custody of the applicant is not required.

6. Learned APP with the assistance of learned Advocate Mr. Nagargoje for the informant vehemently opposed the applications and submitted that the evidence collected would show that the applicant in Bail Application No.1612 of 2021 was running the

slaughterhouse in which many cows have been killed and the meat was stored. There was vehicle present at that spot which had been arranged in such a manner that transportation of the cow meat should not be noticed and it was designed with the help of the applicant in Bail Application No.1615 of 2021. Further, as regards the applicant in Bail application No.1615 of 2021 is concerned, previously also an offence was registered vide Crime No.116 of 2017. It was lodged by police constable Sainath Varpe with Sangamner City Police Station, for the offence punishable under Section 307, 353, 332, 323, 504, 143, 147, 148, 149 of Indian Penal Code, Section 5A of the Maharashtra Animal Preservation Act, Section 37 (1) (3) and 135 of the Maharashtra Police Act etc. The allegations in the said FIR against the applicant in Bail application No.1615 of 2021 were that he had assaulted the police officer with scythe on his head which was caught hold of by the police constable causing him injury to his hands and because of that his life could be saved. The said act was done by the present applicant with an intention to kill. Further, the criminal antecedents of the applicant can be seen that in Crime No.342 of 2018 registered with Sangamner City Police Station for the offence punishable under Section 354-B, 341, 143, 147, 148, 149, 324 and 506 of the Indian

Penal Code with Section 4 punishable under Section 25 of the Arms Act and under Section 135 of the Bombay Police Act, he was released on bail by learned Additional Sessions Judge, Sangamner, on 23-11-2018 vide Criminal M.A.No.203 of 2018. Thus, he has criminal antecedents and, therefore, possibility of commission of similar crime cannot be ruled out.

7. It is to be noted that the investigation is over and charge-sheet has been filed. This indicates that the further physical custody of the applicants is not required for the purpose of investigation. As aforesaid, the allegations in the First Information Report as against the applicant in Bail application No.1612 of 2021 is concerned, it is that when he saw police from the raiding party, he along with accused No.1 allegedly fled away from the spot. However, the person who was caught hold of at the spot was accused No.6 and he told that he is working under accused No.1. The charge-sheet does not show that there was active involvement of this applicant. No doubt it appears that the spot which was raided appears to be slaughterhouse where animals were kept in a cruel manner and also the weapons for their slaughtering were found. If we perused the spot panchanama, the situation on the spot was indicating cruelty to

animals. But the involvement of the applicant Mudassar is required to be considered. Huge quantity of banned flesh/meat worth Rs.1,04,50,050/- is stated to have been seized and around 71 cows who were alive were also seized. But as aforesaid, the involvement that is mere physical presence may not amount to the offence unless an active role is attributed. Therefore, he deserves to be released on bail by imposing stringent conditions.

8. As regards another applicant is concerned, no doubt there appears to be criminal antecedents as against him and both are in respect of bodily offence. However, at the same time his role in the presence case is also required to be considered though as aforesaid the offence that has been made out appear to be heinous. It is stated that this applicant was helping accused No.1 to 9 in transportation of banned flesh/meat and had made such arrangement for the vehicle so that it should not be noticed by anybody. It is to be noted that on the said date the applicant was not found possessing any vehicle with such arrangements. Therefore, whatever has been gathered was on the basis of certain statements and, therefore, even this applicant deserves to be released on bail. Most of the offences under such this crime has

been registered are bailable except Section 9 of the Maharashtra Animal Preservation Act, 1976 which has been amended by the Maharashtra Act No.V of 2015 which includes Section 5A and the punishment provided is imprisonment for a term which may extend to five years or with fine which may extend to Rs.10,000/- or with both. Under such circumstances, with stringent conditions the applications deserve to be allowed. Hence, the following order.

ORDER

- 1) Criminal Applications No.3240 of 2021 and No.3241 of 2021 filed for assist to learned APP are allowed and disposed of.
- 2) Bail Applications No.1612 of 2021 and No.1615 of 2021 are hereby allowed.
- 3) In the event of arrest of the applicants Mudassar Abdul @ Haji Karim Qureshi and Shakir @ Monya Mohammed Shaikh, in connection with Crime No.518 of 2021, registered with Sangamner City Police Station, District Ahmednagar, for the offence punishable under Section 269, 429 read with 34 of the Indian Penal Code, Section 5A, 5C, 9A and 9 of the Maharashtra Animal Preservation Act, 1976 Amended in 1995 and Section 3 and 11 of Preservation of Cruelty to the Animal Act,

1960, they be released on P.R. of Rs.50,000/- (fifty thousand) with two solvent sureties of Rs.25,000/- each (twenty five thousand).

4) Both the applicants shall not tamper with the evidence of the prosecution and shall not commit any offence.

5) If the applicant in BA No.1615 of 2021 commits any further offence, then the prosecution is at liberty to file an application of cancellation of bail under Section 439 (2) of the Code of Criminal Procedure.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-