

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (BA) NO. 353/2022

Shridas Baliram Kadate and others..Versus...State of Maharashtra

CRIMINAL APPLICATION (BA) NO. 354/2022

Yogesh Lalshyam Todase @ Diwakar Lalshyam Todase and others..Versus...State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. R.D.Hajare & Mrs. K. Joshi Advocates for applicant.
Mr. I.J.Damle, APP for Non-applicant/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 05/05/2022

1] Heard Mr. Hajare and Mrs. Joshi, learned counsel for the applicants and Mr. Damle, learned APP for non-applicant/State.

2] The applicants are arraigned for the offence under Sections 2(16), 2(31), 9, 39, 44, 49(B), 50 & 51 of the Wildlife (Protection) Act in Crime No. 4927/123151.

3] The incident is dated 9.9.2021. The arrest is on 11.9.2021. The charge-sheet has been filed on 2.11.2021.

4] Mr.Hajare and Mrs. Joshi, learned counsel for the applicants contends that entire prosecution is vitiated on account of there being non-compliance with the requirement

of Section 50(8) of the Wildlife (Protection) Act, inasmuch as, the entire investigation has been conducted by the RFO, who has also been instrumental in the seizure and recording of statements. They submit that such power is vested only with an officer not below the rank of an Assistant Director of Wildlife or the officer not below the rank of Assistant Conservator of Forest, authorized by the State Government in this behalf. They therefore submit that since the entire investigation is over and the charge-sheet has been filed, the applicants be released on bail on such terms as may be deemed fit and proper.

4] Mr. Damle, learned APP opposes the application and submits that the conducting of the investigation and recording of the statements by the RFO would merely be an irregularity which is curable and considering that there is a seizure from the applicants, the applications needs to be rejected.

5] The incident is dated 9.9.2021, when upon having received secret information that some persons were trading in the body parts of a tiger near Borkhedi Toll Naka, on Chandrapur-Nagpur Highway, a trap was arranged and at about 9.30 p.m., the applicants were arrested at the spot while selling body parts i.e. claws/nails and whiskers of tiger. Seizure memo was prepared and upon investigation being

completed, the charge-sheet came to be filed.

6] A perusal of Section 50(1) of the Wildlife (Protection) Act, 1972, indicates that the power of entry search, arrest and detention is with the Director or any other officer authorized by him or the Chief Wild Life Warden or any other officer authorized by them in this behalf, as indicated therein. Mr. Damle, learned APP has been unable to point out any authorization in the RFO who has conducted the investigation. So also Section 50(8) of the said Act, permits that an Assistant Director of Wild Life Preservation or an officer not below the rank of Assistant Conservator of Forests authorized by the State Government in this behalf, would be the person who shall have the powers for making investigation into any offence against any provisions of the Wildlife (Protection) Act, 1972. Admittedly, the investigation has been conducted by the RFO and Mr. Damle, learned APP has been unable to point out any authorization in his favour. Be it as may, considering the fact that the material has already been seized and entire investigation is over, since the charge-sheet has already been filed on 2.11.21, no fruitful purpose will be served by continuing the further incarceration of the applicants, considering which the following order.

ORDER

- 1] Applications are allowed.
- 2] Applicants in both the applications be released on

bail in Crime No. 4927/123151 registered by the Police Station Buttibori, District-Nagpur, for offence under Sections 2(16), 2(31), 9, 39, 44, 49(B), 50 & 51 of the Wildlife (Protection) Act, on each of them furnishing PR bond in the sum of Rs.1,00,000/- with two solvent sureties in the like amount.

3] The applicants shall not tamper with the prosecution evidence and shall not undue influence the prosecution witnesses in any manner.

4] The applicants shall not commit any similar offence or for that matter any offence of whatsoever nature while on bail.

5] The applicants shall attend the trial Court on each and every date and ensure that the trial is not protracted.

6] Any violation of the above conditions shall result in cancellation of bail.

JUDGE

Rvjalit