

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

CRIMINAL APPLICATION (ABA) NO.202 OF 2022

Shankar Rajeram Dadmal

Versus

State of Maharashtra, through its Range Forest Officer, Butibori, Range Forest,
Butibori, Nagpur

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

Court's or Judge's Order

Shri Firdoz Mirza, Advocate for the applicant.

Shri V.A. Thakare, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.

DATED : 20/04/2022

1. The applicant is seeking pre-arrest bail in POR No.04929/123202, dated 06.03.2022, registered with Forest Ranger Butibori, Police Station, Butibori, Nagpur, for the offences punishable under Sections 9, 39, 44, 48-A, 49-B, 50, 51 and 57 of the Wild Life (Protection) Act, 1972.

2. It is the case of the prosecution that the Investigation Wing of the Forest Department received secrete information that there will be deal of wild animal's skin in the area. Accordingly, dummy customer was following the accused persons and as per their telephonic conversation raid was conducted and accused Sanjiv Behera and Naresh Darode came to be arrested along with leopard

skin on 06.03.2022 and thereupon, POR came to be registered.

3. During the course of the investigation, the Investigating Agency arrested the accused Pravin Shriram Lanjewar on 06.03.2022 and thereupon, the present application was arraigned as an accused.

4. Shri Mirza, learned counsel for the applicant submits that the applicant is a Zilla Parishad member and looking to his status of life, he may be granted pre-arrest bail.

5. It is submitted that the applicant has been falsely implicated in the alleged offence and except the statement of co-accused, there is nothing to show the involvement of the applicant in the alleged offence.

6. He has further stated that the maximum punishment in this case is of seven years. He further submits that as this Court had granted *ad-interim* protection to the applicant, he attended the office of the Forest Ranger Officer and his statement was also recorded. Thus, he submits that his custody is no more required, in this case.

7. Shri Thakare, learned APP strongly opposed the application and pointed out from the Case Diary that,

sufficient material is collected by the Investigating Agency. He has pointed out from the statements of the witnesses to show the involvement and active role of the applicant in the alleged offence.

8. He has further pointed out that CDR is obtained, from which, it is revealed that the applicant was continuously in contact with the accused Pravin Lanjewar on the date of incident.

9. He further submits that the applicant is absconding and he was located earlier on three occasions on the basis of his mobile location. However, on all the three occasions i.e. at Bhandara, Bhiwapur and Chandrapur, escaped the Investigating Agency and now his mobile phone is switched off. Thus, he submits that unless custodial interrogation is done, it is difficult to complete the investigation.

10. Shri Thakare, learned APP points out that after granting *ad-interim* anticipatory bail, the applicant attended the office of Range Forest Officer. However, while recording his statement, he did not co-operate the officer and evasive replies were given therefore, he submits that if the present application is allowed, the applicant would not co-operate the Investigation Agency in the present matter and in that case, it would be difficult for the Investigating Agency to

conduct the effective investigation and to reach to the root of the offence. Accordingly, he prays for rejection of the present application.

11. Shri Thakare, learned APP further points out that earlier also similar offence was registered against the applicant and as such there is criminal antecedents against the applicant.

12. Shri Mirza, learned counsel for the applicant in reply submits that the applicant was honourably acquitted in the said case and therefore, it cannot be said that there is any criminal antecedents to the discredit of the applicant.

13. Today, the Investigating Officer is personally present before this Court.

14. I have perused the Case Diary. There are statements of witnesses other than the co-accused persons stating the name of the applicant and active role of the applicant in the alleged offence.

15. The statements of witnesses other than the co-accused and the CDR *prima facie* show the involvement of the applicant in the alleged offence. Therefore, the submission of learned counsel for the applicant that, being Zilla Parishad member, the applicant is having contacts with

many persons and therefore, statement of any person saying that he knows the applicant or making a phone call to such person by applicant, is not sufficient to show the involvement of the applicant, cannot be accepted at this stage.

16. The Leopard is the scheduled wild animal and in this case, skin of leopard is recovered. The Investigating Agency has also recovered original licence of the applicant from the house of co-accused Pravin Lanjewar and diary containing the telephone numbers including the telephone number of the applicant. However, relevant material is the statement of witnesses, who has attributed the role of the applicant in the alleged offence.

17. The Hon'ble Supreme Court of India in the case of *P.Chidambaram ..vs..Enforcement Directorate*¹, has observed thus:

“69. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of

1 (2019) 9 SCC 24

anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

70. ...

71. ...

72. *We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C. is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India."*

18. In the circumstances though, it is argued by the learned counsel for the applicant that maximum punishment is of seven years, looking to the severity of the offence and the fact that in this case, the custodial interrogation of the applicant is necessary for effective

investigation, I am not inclined to grant pre-arrest bail to the applicant.

19. Shri Mirza, learned counsel for the applicant has placed reliance on an order of this Court granting pre-arrest bail in similar offence. In the said order, para-8 is relevant which says that except the statement of co-accused, no other material was found in the Case Diary to show the involvement of the applicant.

20. In this case, I have already observed that other than the statement of co-accused, there is sufficient material including the statement of independent witness and other material to *Prima facie* show the involvement of the applicant in the alleged offence. In that view of the matter, the order passed in Criminal Application (ABA) No.716 of 2021 is of no help to the applicant in this case.

The application is **rejected**.

21. At this stage, Shri Mirza, learned counsel for the applicant at this stage prays for continuation of interim protection.

22. No exceptional circumstances are available in this case, as discussed by the Hon'ble Supreme Court of India in the case of *Nathu Singh vs. State of Uttar Pradesh*

*and Ors, (Special Leave Petition (Crl.) No.2096 of 2021, dated 28th May, 2021), the request is **rejected**.*

[ANIL S. KILOR, J.]