

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

CRIMINAL APPLICATION (ABA) NO.565 OF 2021

(Sadique Maqbool Shah .Vs. State of Maharashtra)

WITH

CRIMINAL APPLICATION (ABA) NO.567 OF 2021

(Javed Khan S/o Zameer Ullah Khan .Vs. State of Maharashtra)

WITH

CRIMINAL APPLICATION (ABA) NO.568 OF 2021

(Junaid Ahmed Khan S/o Muzaffar Khan .Vs. State of Maharashtra)

WITH

CRIMINAL APPLICATION (ABA) NO.569 OF 2021

(Gulam Ahmad Khan S/o Alam Khan .Vs. State of Maharashtra)

WITH

CRIMINAL APPLICATION (ABA) NO.570 OF 2021

(Ajaz Khan S/o Husen Khan .Vs. State of Maharashtra)

WITH

CRIMINAL APPLICATION (ABA) NO.571 OF 2021

(Mudassir Nawaz Manzur Khan .Vs. State of Maharashtra)

WITH

CRIMINAL APPLICATION (ABA) NO.572 OF 2021

(Chandrashekhar S/o Mahadeo Wani .Vs. State of Maharashtra)

WITH

CRIMINAL APPLICATION (ABA) NO.573 OF 2021

(Nisar Ahmad Alam Khan .Vs. State of Maharashtra)

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

Court's or Judge's Order

Shri A.R. Ingole, Advocate for the applicant(s)

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

CORAM : ANIL S. KILOR, J.

DATED : 22/03/2022

1. Except the applicant in Criminal Application No. 571 of 2021, all the applicants are truck owners and the applicant in Criminal Application No.571 of 2021 is the driver of the truck, which were intercepted on

10.08.2021 by Police during the patrolling. During the inquiry, it was revealed that the Transit Passes, which the truck drivers were carrying, were issued at Deori i.e. at the Border of the Maharashtra and Madhya Pradesh.

2. On inquiry, the drivers of the truck informed that they have uploaded the sand from Dhamtari Ghat, Raipur, Chattisgarh. As one of the trucks who is having GPS tracking system, it was verified for the same and it was revealed that the said truck was never crossed the Maharashtra border and had ever gone to Raipur, Chattisgarh. The other trucks did not have GPS tracking, though it was mandatory for the vehicles carrying sand. Thereupon, the offence was registered as Crime No.392 of 2021, dated 10.08.2021, with Police Station Hingna, District Nagpur (city), for the offence punishable under Sections 34, 379 and 420 of the Indian Penal Code against the applicants in this all the applications and other accused persons.

3. Shri A.R. Ingole, learned counsel for the applicants submits that as the applicants were carrying valid transit passes, the offence under Section 379 or 420 will not attract in this matter. It is submitted that the Police have no authority in the present matter to register the offence, whereas, the Tahsildar or the Mining Authority can only take action.

4. It is submitted that there are no allegations of tampering of transit pass by the applicants. Accordingly, he submits that the custody of the

applicant is not necessary and by arguing so, he is pressing for confirmation of *ad-interim* protection granted to the applicants by this Court.

5. Shri V.A. Thakare, learned APP draws attention to the various material collected during the investigation. It is submitted that in the inquiry, it was revealed that though it was stated by the drivers of the trucks that the sand was loaded in the truck from Dhantari Ghat, Raipur, Chattisgarh, the trucks never crossed the Maharashtra border. The GPS tracking system, which was available in one of the trucks, does not support the case of the applicants.

6. It is therefore, submitted that this is a clear case of sand theft and if there will be no deterrence, the incident of such sand theft will be increased and it would directly affect the environment. It is further pointed out that the applicants are not co-operating with the Investigating Officer only for the reason that they have been protected by this Court.

7. It is submitted that unless the custodial interrogation is made, it is not possible to complete the investigation in the peculiar facts of the present case. He therefore, opposes the present application.

8. I have perused the Case Diary and also the contents of the First Information Report.

9. The applicants were granted *ad-interim* anticipatory bail in the month of September, 2021. One of the conditions of grant of *ad-interim* pre-arrest bail was to attend the concerned Police Station which the applicants have complied with. However, the purpose to put such conditions was that, the applicants should co-operate the Investigating Officer in further investigation.

10. However, Shri Thakare, learned APP stated that no such co-operation was given by the applicants. On 21.02.2022, the said fact was pointed out by the learned APP to this Court and thereupon, the learned counsel for the applicant sought time and made a statement that the applicants would co-operate the Investigation Officer in investigation and whatever document were required including original transit pass, the applicants would submit. Thereafter, for the same reason again the matter was adjourned on 23.02.2022 and lastly, 15.03.2022.

11. Today, when the matter was called out, the learned APP pointed out that the applicants have not submitted the necessary documents sought by the Investigating Officer. It is further stated that the applicants are not co-operating with the Investigating Officer in investigation.

12. On perusal of the Case Diary, it is revealed that the prosecution has taken out CDR, from where it is pointed out that these vehicles had never crossed the Maharashtra border and therefore, it is not possible that the sand was loaded from Dhantari Ghat, Raipur, Chattisgarh. The Police

therefore, want custodial interrogation to find out the location where from the trucks were loaded and also the find out, whether there was any valid transit pass, if the trucks were loaded within Maharashtra.

13. In the above referred backdrop, I am of the opinion that the custodial interrogation of the applicants in the present case is necessary. Accordingly, I am not inclined to allow the present application.

Hence, the applications are **rejected**.

[ANIL S. KILOR, J.]