

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1415 OF 2023

Mohd Amin Mohd Haroon Ansari ... Applicant
V/s.
The State of Maharashtra ... Respondent

Mr. Mahendra n. Sandhyanshiv for the applicant.

Mr. Pandurang H. Gaikwad, APP for the respondent/State.

Mr Dnyaneshwar Badgujar, API, Pawarwadi police station, Malegaon is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 8, 2023

P.C.:

1. This is an application under section 438 of the Criminal Procedure Code, 1973, in connection with C.R. No.86 of 2023 for offences under section 9/51 of the Wild Life (Protection) Act, 1972, read with sections 3/25, 4/25 of the Arms Act registered with Pawarwadi Police Station, Malegaon.

2. The Assistant Police Inspector of Pawarwadi Police Station, Malegaon, lodged F.I.R. against the applicant and others, alleging that based on secret information when they raided the farmhouse owned by the mother of the applicant, he found the articles as mentioned below:

१) १,४४,०००-०० रु. कि.चे १२० किलो वजनाचे ३ नर व ३ मादी

अंदाजे ४ ते ६ वर्षे वयोगटातील हरणांचे मांस त्यात ३ मुंडक्यांना प्रत्येक २ सिंगे असलेले, ३ मुंडके विना सिंगांचे, २४ गुडघ्यापासुन खुरांपर्यंत कापलेले पाय तसेच सदर हरणांचे सर्व अवयवांचे तुकडे (मान, पासळ्या, पुढचे मागचे पायांचे तुकडे, कमरेचा भाग, मागचा भाग, काळीज, हृदय वगैरे)

२) ५०-०० रु. किचा एक लोखंडी सुरा, १०.४ इंच लांबीचा, त्याचे पात्याची लांबी ६.२ इंच, मुठ ४.२ इंच लांबीचा, निमुळत्या आकाराचा धारदार असलेला मुठीला बारीक दोरी गुंढाळलेली. जु.वा. कि.अं.

३) ५०-०० रु. किचा एक लोखंडी सुरा, ११.५ इंच लांबीचा, त्याचे पात्याची लांबी ७.३ इंच, मुठ ४.२ इंच लांबीचा, निमुळत्या आकाराचा धारदार असलेला जु. वा. कि.अं.

४) ५०-०० रु. किचा एक लोखंडी सुरा, १०.८ इंच लांबीचा, त्याचे पात्याची लांबी ६.६ इंच, मुठ ४.२ इंच लांबीचा, निमुळत्या आकाराचा धारदार असलेला जु.वा. कि.अं.

५) ५०-०० रु. किचा एक कानस, १३ इंच लांबीची, मुठी पासुन पुढील बाजुची लांबी ७ इंच व मुठीची लांबी ६ इंच जु.वा. कि.अं.

६) २००-०० रु. कि.ची एक लोखंडी धारदार कुऱ्हाड लाकडी दांडा असलेली. जु.वा. कि. अं.

७) २००-०० रु. कि.ची एक लोखंडी धारदार कुऱ्हाड लाकडी दांडा असलेली. जु.वा. कि. अं.

८) २०००-०० रु.कि.चा एक इलेक्ट्रॉनिक वजन काटा, कंपनीचे नाव नसलेला जु.वा. कि.अं.

१४६, ६००-०० रु. एकुण.

3. Therefore, he lodged the first information report against the applicant and others for violation of section 9/51 of the Wild Life (Protection) Act, 1972 and sections 3/25 and 4/25 of the Arms Act. The applicant approached learned Sessions Judge for pre-arrest bail, which has been rejected by order dated 3rd May 2023. Aggrieved thereby, the applicant has filed a present anticipatory bail application.

4. Learned advocate for the applicant submitted that in view of section 55 of the Wild Life (Protection) Act 1972, only the persons enumerated in the said section are entitled to initiate prosecution and, therefore, the lodging of the first information report is barred. According to him, the applicant has been falsely implicated, and there is no material to connect the applicant with the alleged offence. In support of his submission, he relied on the unreported judgment of the Division Bench of this Court in Writ Petition No.4213 of 2015 in the case of **Gulam Mustafa Malik vs. State of Maharashtra & Anr.**, decided on 4th February 2016. He also relied on the judgment in the case of **Mannu Kuduba Gavane and Another vs. The State of Maharashtra** reported in 2016 (1) Bom. C.R. (Cri) 800.

5. *Per contra*, learned APP for the State submitted that in view of the government resolution dated 21st July 2013, powers to lodge prosecutions have been conferred on the persons mentioned in the schedule. Entry(4) of the schedule, annexed to column No.3, states that police officers not below the rank of Police Sub-Inspectors are entitled to lodge prosecution for violation of provisions enumerated in the notification as regards the Wild Life

(Protection) Act, 1972. He invited my attention to the applicant's antecedents, wherein criminal proceedings for violation of provisions of the Wild Life (Protection) Act, 1972, are pending. In support of his submission, he relied on the judgment in the case of **Moti Lal vs. Central Bureau of Investigation & Anr.**, reported in 2002 (4) SCC 713 and the Division Bench of this Court in **Wahiduzzaman Mohammad Yaseen and Others vs State of Maharashtra and Others**, reported in 2021 DGLS (Bom.) 2610. Therefore, he submitted that the applicant is not entitled to grant relief.

6. Having considered the submissions and the case diary produced on record, it appears that the first contention raised on behalf of the applicant about the authority of police officers to lodge prosecution has no merit. The Apex Court, in the case of **Moti Lal**, was considering the prosecution initiated by the Central Bureau of Investigation in the exercise of the power conferred under the provisions of the Delhi Special Police Establishment Act, 1946. The Apex Court, while considering the notification issued by the Central Government dated 7th April 2000, in the exercise of Clause (a) of section 55 of the Wild Life (Protection) Act, 1972, held that the notification issued by Central Government dated 21st March 2000, under sections 5 and 6 of the said Act empowers the CBI for investigation of offences under the Wild Life (Protection) Act.

7. The Division Bench of this Court, in the case of **Wahiduzzaman Mohammad Yaseen**, considering the said judgment, repelled the submission raised on behalf of the learned

advocate for the applicant that sections 50 and 55 of the Wild Life (Protection) Act, 1972. In view of the judgment of the Apex Court in the case of **Moti Lal**, and at this stage I do not find any substance that the police officer not below the rank of Police Sub-Inspector has no authority to investigate the Wild Life (Protection) Act, 1972.

8. In so far as the case on merit is concerned, the learned APP invited my attention to the antecedents of the applicant wherein two prosecutions bearing Nos.5 of 2018-2019 and 01 of 2021-2022 have been registered against him on 30th October 2018 and 8th April 2021 for violation of under sections 9, 39, 44 and 48 of the Wild Life (Protection) Act, 1972. Apart from antecedents, the massive quantity of animal meat protected under the said act has been recovered from the property owned by the applicant's mother. Prima facie, the applicant is found to be in possession of prohibited arms in the raid. Therefore, in my opinion, custodial interrogation of the applicant is necessary. Therefore, the application could not be entertained.

9. The anticipatory bail application is rejected.

(AMIT BORKAR, J.)