

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

ANTICIPATORY BAIL APPLICATION NO. 1689 OF 2023

Abdul Dastgir Mulla

...Applicant

vs.

RPF – Union of India and Anr.

...Respondents

Mr.Priyal Sarda – Advocate for Applicant.

Mr.H.J.Dedhia – APP for Respondent-State.

Mr.D.B.Tripathi – PP – Railway Court – Pune.

Sheesh Ram Meena – Inspector – RPF – Satara – Pune Division.

CORAM : S. M. MODAK, J.

DATED : 22ND JUNE 2023

P. C. :

1. Learned APP submitted that an offence is registered with the Railway Protection Force – Satara and it is on Page No.8. Whereas, in the title clause, there is a reference that the Respondent is the State of Maharashtra. It is contended that the State cannot represent the person who is Central Agency and as such, Union of India will be a necessary party. Let the Applicant to carry out that amendment forthwith. Union of India will be the Respondent No.1 and State of Maharashtra will be Respondent No.2.

Later on :-

Satish Sangar

2. Heard learned Advocate Shri.Sarda for the Applicant.
3. When the matter was called out in the first session, in view of the submission made by learned APP that Union of India is necessary party, that direction was given to carry out that amendment forthwith. Afterwards, learned APP on taking instructions from the Investigating Officer and the Public Prosecutor – D.B.Trpathi argued the matter.
4. There is an information given by one Rajiv Ranjan – Station Manager and one more staff of Salpa Railway Station on 4th May, 2023 that there was a shortage of 8 rail pieces. It was given when they got information that certain suspicious persons were found near Salpa Railway Station. They also realized that one red colour vehicle, locally called as ‘chotta hatti’ bearing No. MH-09 CA-9162 was found. Two-three persons were also noticed. It was noticed in C.C.T.V, cameras and also from a mobile.
5. During enquiry, it was revealed that the vehicle belongs to one Pravin Dattatraya Chavan. During enquiry with said Chavan, it was disclosed that he has sold away that vehicle to one Omprakash Gupta. It was further revealed that the vehicle is purchased by the son Raja Omprakash Gupta of Omprakash Gupta. Accordingly, an

offence is registered at C.R. No. 2 of 2023 under Section 3(a) of Railway Property (Unlawful Possession) Act, 1966 [“RPUP Act”] on 4th May, 2023. Thereafter, on 6th May, 2023, Dadasaheb Kolte – Inspector RPF has lodged the complaint.

6. Said Raja Omprakash Gupta was arrested and it was revealed that the present Applicant also helped the said Raja in stealing those pieces. A statement of said Raja is recorded. The Prosecution relied upon the said statement, CDR belonging to the present Applicant and co-accused showing their location in and around the spot on the relevant date. They are annexed to the investigation papers. It is submitted that there is one more offence registered against the present Applicant earlier.

7. Learned Advocate Mr.Sarda submitted that at present the offence is only under Section 3(a) of RPUP Act. It contemplates possession of railway property for invoking Section 3 of RPUP Act. According to him, unless and until a person is found in possession of railway property, he cannot be prosecuted under Section 3 of the said Act. He has expressed willingness to cooperate the Police during investigation.

8. Learned APP invited my attention to Section 4 of RPUP Act

which prescribes punishment if any one abets, conspires or connives to commit any of the offences under the RPUP Act. It is true that at present, they have not invoked Section 4 of RPUP Act and an explanation is offered that there are certain special provisions under the said Act and filing of charge-sheet is not expected.

9. It is submitted that after arrest of the Accused on a reasonable suspicion, if any material is found, they used to apply the provisions of Section 4 of RPUP Act.

10. It is true that even though the offence is non cognizable under Section 5 of RPUP Act, the officer as per the force can arrest a person without order from the Magistrate. This is a provision of Section 6 of RPUP Act. So, under normal IPC case, one can say that unless relevant sections of the IPC are invoked, the contention of Prosecution cannot be accepted. But, there is deviation from normal law when the provisions of RPUP Act are invoked.

11. At present, there are two circumstances showing the prima facie involvement of the Applicant. It is by way of statement of the Respondent-Accused Raja and the CDR belonging to the mobile of this Applicant. So, there is prima facie involvement. Custodial interrogation is required. Hence, the Application is rejected.

12. These are my *prima facie* observations. Let the learned trial Court need not be influenced by them.
13. Application is disposed of in the aforesaid terms.
14. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]