

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2163 OF 2022

1. Santosh P. Kalkutagi (Patharvat)
2. Raju B. Kalkutagi (Patharvat) ...Applicants
V/s.
The State of Maharashtra and anr. ...Respondents.

WITH
ANTICIPATORY BAIL APPLICATION NO. 2164 OF 2022

1. Sudhir N. Afale
2. Abhijit A. Pawar ...Applicants
V/s.
The State of Maharashtra and anr. ...Respondents.

WITH
ANTICIPATORY BAIL APPLICATION NO. 2165 OF 2022

1. Ashok H. Bhosale
2. Dipak N. Bagal ...Applicants
V/s.
The State of Maharashtra and anr. ...Respondents.

Mr. Manoj A. Patil i/b Mr. Akshay A. Kulkarni for the Applicants.
Mr. P.H. Gaikwad-Patil, APP for the Respondent/State.
Mr. Nitin B. Patil for the Respondent No.2.

CORAM : N.R. BORKAR, J.
DATE : 01.03.2023.

P.C. :

1. The applicants, who are accused in Crime No.254 of 2022 registered at Jaysingpur police station, Dist. Kolhapur for the offence punishable under Section 379 read with 34 of the Indian Penal Code, have filed these applications under Section 438 of Code of Criminal Procedure for anticipatory bail.

2. I have heard the learned counsel appearing for the applicants, the learned APP for the respondent / State and the learned counsel for respondent No.2.

3. This Court on 11 August 2022 passed the following order:

"1. Heard learned Counsel for the applicant and the learned APP.

2. Genesis of the offence appears to have commenced way back on 5th April, 2022 till lodging of the FIR on 26th July, 2022 by the complainant. Essentially, it appears to be a dispute of civil nature in respect of Gat No.133/2/3 and Gat No.133/2/4/5/A.

3. Learned Counsel for the applicant has invited my attention to the fact that Regular Civil Suit No.43 of 2016 has been filed by some of the applicants against the informant and the family seeking specific relief in respect of the subject property wherein the learned Trial Judge has restrained the complainant from disturbing the possession of the applicants over the subject matter of the suit property. The order is dated 5th July, 2016.

4. From the tenor of the allegations in the FIR, it appears that custodial interrogation of the applicants at this stage is not required and, therefore, they need interim protection till their applications are heard finally. Under such circumstances, following order is expedient :-

(i) In the event of arrest of the applicants in C.R. No. 254 of 2022 registered with Jaysingpur Police Station, Jaysingpur, Dist. Kolhapur for the offences under Section 379 r/w 34 of the Indian Penal Code, the applicants be released on furnishing a P.R. bond in the sum of Rs.20,000/- with one surety each in the like amount.

(ii) The applicants shall co-operate with the Investigation Officer and attend the concerned Police Station as and when summoned.

5. Issue notice to the respondents returnable on 30th August, 2022 as to why the interim relief shall not be made final.

6. List the applications on 30th August, 2022."

4. The learned counsel for the applicants submits that this Court in the above interim order has already observed that essentially the dispute appears to be of civil nature. It is submitted that considering the overall facts and circumstances, the interim order be confirmed.

5. According to the complainant, the present applicants had illegally excavated minor minerals from the land owned by him and period of excavation appears to be from March 2020 to 26 July 2022. The respondent No.2 has filed the affidavit in reply, however, not a single complaint is made to the concerned authorities practically for two years. In that view of matter, I am inclined to allow the applications. The interim order passed by this Court dated 11 August 2022 is hereby confirmed.

6. The Applications are disposed of.

[N.R.BORKAR, J.]