

Sayali Upasani

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

ANTICIPATORY BAIL APPLICATION NO. 3559 OF 2022

Bharat Tatya Khotare	...Applicant
Versus	
The State of Maharashtra	...Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 3560 OF 2022

Devnath Mahadu Bendkoli	...Applicant
Versus	
The State of Maharashtra	...Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 4 OF 2023

Mahendra Tulshiram @ Tulshidas Pawar	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Ganesh K. Gole with Mr. Viraj Shelatkar i/b Ateet Shirodkar, for Applicants.

Mr. R. M. Pethe, APP for State.

Mr. Dhumse, PSI, Ghoti Police Station, Nashik Rural,
Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 5th SEPTEMBER, 2023

ORDER.:-

1) These applications are preferred for pre-arrest bail in connection with C.R. No. 144 of 2022, registered with Ghoti police station, Nashik, for the offences punishable under Sections 395, 412, 343, 504 and 506 of Indian Penal Code, 1860 ("the Penal Code").

2) A Container bearing No. MH-43-BG-5463 laden with 2200 boxes of beer left the Kingfisher factory at the Walunj, Dist. Aurangabad for Mumbai. The first informant was at the wheel of the said container. At Gangapur, Dist. Aurangabad, co-accused – Ayyub alias Guddu Khan (A-10), Nilesh Jagtap (A-1) and others boarded the said container and forced the driver to change the route and made him unconscious. Eventually the first informant was wrongfully confined in a building at Nashik. The co-accused took away the container and unloaded the beer boxes at Amboli and Nirgude, Tal. Trimbakeshwar, Dist. Nashik and sold the said beer boxes. The first informant, after escaping from the wrongful confinement, lodged the report against the named and unknown accused with the allegations that the accused committed robbery of the container and the goods laden therein aggregating to Rs.63,29,856/-.

3) A few of the accused came to be arrested and during the course of the investigation, 1062 boxes of beer were recovered at the instance of various accused.

4) Investigation revealed that applicant-Bharat Khotare (A-18) allegedly got 750 boxes of beer unloaded at his field at Nirgude. Applicant – Devnath Mahadu Bendkoli (A-17) was allegedly instrumental in committing the dacoity and purchasing the stolen property from the persons, who actually moved the container and the stolen property. The applicant - Mahendra Tulshiram Pawar (A-16) allegedly sold 100 boxes of beer to a co-accused and received a sum of Rs.50,000/- from the said co-accused.

5) In the backdrop of the aforesaid nature of the accusation, the applicants approached the Court of Session for pre-arrest bail. The learned Additional Sessions Judge declined to exercise the discretion in favour of the applicants opining, inter alia, that the offences were of a grave nature and custodial interrogation of the applicants was warranted to facilitate further investigation and recovery of remaining stolen property.

6) The applicants have thus approached this Court. Initially, it seems, this Court granted an ad-interim relief

restraining the police from arresting the applicants by an order dated 9th January, 2023.

7) I have heard Mr. Ganesh Gole, the learned Counsel for the applicants and Mr. Pethe, the learned APP for the State. With the assistance of the learned Counsel, I have also perused the material on record.

8) Mr. Gole submitted that even if the prosecution case is taken at par, the major offence punishable under Section 395 of the Penal Code can not be attributed to the applicants. At best, Mr. Gole would urge, each of the applicants can be arraigned for the offence punishable under Section 412 of the Penal Code. Mr. Gole would submit that prima facie there is a discrepancy as regards the applicant – Bharat Khotare being a receiver of the stolen property. Taking the Court through the alleged inconsistency in the remand reports, Mr. Gole submitted that the prosecution case based on the alleged unloading of 750 boxes at Nirgude is riddled with irreconcilable inconsistency. As regards applicants – Devnath Bendkoli (A-17) and Mahendra Pawar (A-16), there is no material to show that they had received the stolen property. The allegations of having purchased the stolen property from the co-accused are based

on the statements of the co-accused which do not constitute legal evidence, submitted Mr. Gole.

9) As against this, Mr. Pethe, the learned APP would urge that the material on record makes out a strong prima facie case against the applicants. Having regard to the gravity and the nature of the accusation and especially the fact that a huge consignment of 2200 beer boxes along with the container was robbed of by causing hurt to the driver, making him unconscious and wrongfully confining him, custodial interrogation of the applicants is necessary, urged Mr. Pethe.

10) Mr. Pethe further submits that Devnath Bendkoli (A-17) appears to be a habitual offender as two crimes for the offence punishable under Section 395 of the Penal Code have been registered against him at Trimbakeshwar police station (CR No. 73 of 2016) and Harsul Police Station (CR No. 50 of 2016). Therefore, the Court may not exercise the discretion in favour of the applicants.

11) The thrust of the submission of Mr. Gole that there is an irreconcilable inconsistency in the prosecution case as regards the place where 750 beer boxes were unloaded, does not seem to advance the cause of the applicants especially that of Bharat (A-18). Not only there is material in the form of the leads given

by the co-accused but in the instant application itself the applicant Bharat asserts that the goods from the container were unloaded at his field by Haridas Shevare (A-13). However, the applicant claims, he was unaware that the said goods constituted stolen property obtained by dacoity. Thus, *prima facie*, it is not open for the applicant Bharat to assail the prosecution version on the ground that there is no material to show that the stolen property was unloaded at his field.

12) The submission of applicant Bharat being an innocent receiver, is required to be appreciated in the light of the fact that the nature of the commodity and quantum are such that *prima facie* the person receiving the said property can be attributed with reason to believe the property to be stolen, even if it is assumed that the applicant had no knowledge that the said property was the stolen property. Moreover, the material on record further indicates that the alleged stolen property was removed from the field of the applicant – Bharat in tranches and there were transactions with the persons, who had allegedly moved the container and the goods therefrom at the very field of applicant – Bharat. This *prima facie* dishonest retention of the stolen property after becoming aware of the nature of the said property, by the applicant Bharat falls within

the tentacles of Section 411 of the Penal Code, even if it is assumed that the applicant Bharat had no dishonest intention when the goods were unloaded.

13) I am, therefore, inclined to hold that there is a *prima facie* case for the offence punishable under Section 412 of the Penal Code against the applicant – Bharat. Custodial interrogation of the applicant – Bharat is indispensable to unearth the circumstances in which the goods were unloaded at his field and the subsequent disposal thereof, the receivers of the said property and the circumstances in which the said disposal occurred. Resultantly, I am not inclined to the exercise discretion in favour of the applicant – Bharat.

14) The case of Devnath Bendkoli (A-17) stands on even worse footing. There is material on record to show that Devnath Bendkoli was allegedly instrumental in moving the container from Waghera via *Ghat*. When the container got stuck in the *Ghat*, applicant – Devnath allegedly arranged for another vehicle to remove the container therefrom and took it to the place of Bharat. There is further material to show that the applicant – Devnath and co-accused Mithun Raut (A-12) paid a sum of Rs.1,90,000/- to the co-accused, who had initially robbed the driver. *Prima facie* there is material to show the

involvement of Devnath not only in making payment to the co-accused but also in moving the container laden with the goods.

15) It is true the material is primarily in the form of the leads given by the co-accused. However, at this stage, the said material can be taken into account to facilitate further investigation. Custodial interrogation of applicant – Devnath is warranted for the same.

16) The fact that two crimes for the offence punishable under Section 395 of the Penal Code have been registered against the applicant lend support to the submission of Mr. Pethe that the applicant – Devnath seems to have been indulging in identical offences. Such antecedents of applicant – Devnath dissuade the Court from exercising the discretion in his favour.

17) So far as the applicant Mahendra Pawar (A-16), the allegations are that the applicant had sold 100 beer boxes to the co-accused and received a sum of Rs. 50,000/-. The applicant allegedly asked the co-accused to collect 100 boxes of beer on 30th October, 2022 from the place of Bharat. It further appears that there was a heightened activity at the place of Bharat as a number of persons allegedly removed the beer boxes from the place of Bharat. In the aforesaid view of the matter, since the allegations against the applicant Mahendra

are that of asking a co-accused to collect the boxes of beer from the place of Bharat, the question as to whether the applicant – Mahendra can be imputed with the criminal intent or knowledge envisaged by Section 411 of the Penal Code would arise for consideration.

18) Custodial interrogation of the applicant – Mahendra, in the backdrop of the aforesaid nature of the accusation, does not seem warranted. I am, therefore, persuaded to exercise the discretion in favour of the applicant – Mahendra.

19) The upshot of aforesaid consideration is that the applications of Bharat Khotare (ABA No.3559 of 2022) and Devnath Bendkoli (ABA No.3560 of 2022) deserve to be rejected and that of Mahendra Pawar in ABA No.4 of 2023 deserves to be allowed.

20) Hence, the following order:-

ORDER

I) ABA No. 3559/2022 and ABA No. 3560 of 2022 stand rejected.

II) ABA No. 4 of 2023 stands allowed.

III) In the event of arrest of the applicant Mahendra Pawar in connection with C.R. No.144 of 2022, registered with Ghoti police station, Nashik, for the offences punishable under

Sections 395, 412, 343, 504 and 506 of Indian Penal Code, 1860, the applicant - Mahendra be released on bail on executing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

IV) The applicant Mahendra shall co-operate with the investigation and attend Ghoti Police Station on every Sunday in between 10.00 am to 12.00 noon for a period of one month and thereafter as may be directed by the Investigating Officer.

V) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

VI) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]