

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO.699 OF 2022

Sanjay Rambarose Sigh Kashyap Vs. State of Maharashtra

AND

CRIMINAL APPLICATION (ABA) NO.213 OF 2023

Sheikh Muhammad Jani Sardar Sheikh Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

ABA 699/2022

Shri D.V. Chauhan with Shri S.S. Sohoni, Advocates for
applicant.

Shri S.S. Doifode, APP for non-applicant/State.

ABA 213/2023

Shri A.Z. Mirza, Advocate for the applicant.

Shri M.J. Khan, APP for non-applicant/State .

CORAM : ANIL L. PANSARE, J.

DATE : APRIL 28, 2023.

Heard.

2. The applicants are apprehending arrest in Crime No.514/2022 registered with Police Station, Katol, District Nagpur for the offence punishable under Sections 379, 411, 120B read with Section 34 of the Indian Penal Code and under Section 126 of the Maharashtra Police Act. The maximum punishment for the offences alleged is three years.

3. Having heard both sides and having gone through the material place before me and the case diary, briefly stated the accusation against the applicants is that they in connivance with 21 other accused have stolen iron material viz. Gridder, Bottom Outer Splice Plates, Bottom Inner Splice Plates, Web Splice Plates, Top Inner/Outer Splice Plate, End Diaphragm, Bottom Later Bracing And Int Diaphragm (for

short, 'iron articles'). The amount of stolen property is about ₹92 lakhs. These iron articles were lying at the site at Katol for the work of construction of Railway Bridge. The accused nos.1 to 12 have allegedly lifted the material from the Katol site and the material was initially brought at the godown of co-accused Dilip Sahu. From the godown of Dilip Sahu, the iron articles were routed through co-accused Salim Bax to Ramsons Casting Private Limited, MIDC, Hingna (for short, 'Ramsons Company'). The iron articles were cut into pieces before being brought at Ramsons Company. The applicant – Jani Sardar in Criminal Application (ABA) No.213/2023 is accused no.12 and applicant – Sanjay in Criminal Application (ABA) No.699/2022 is accused no.21. Sanjay is an employee of Ramsons Company and is looking after the godown of the Company. The iron articles are weighing about 102 tons. The material recovered till today is only 0.5 ton.

4. Learned APP, in both applications, have vehemently opposed the applications mainly on the ground that the iron articles are still not recovered and that this fact is within the exclusive knowledge of the accused persons. The investigation on the point as to what exactly has been done with the stolen articles can only proceed after custodial interrogation of the applicants.

5. Normally considering the nature of allegations and contentions of learned APP, the anticipatory bail would not have been entertained. However, the learned counsel for the applicants have pointed out some apparent flaws right from the beginning of the case, which made this Court take a

different view in the matter, in the sense the defects are such as would make the applicants entitled for the anticipatory bail. The defects are as under:

- (i) The FIR states that on 26.05.2022 the iron articles were found at the place at site and the iron articles were stolen between 26.05.2022 to 27.06.2022, but, for the first time today the prosecution has come up with a case that part of material was stolen on 02.05.2022 and 15.05.2022 and in support the prosecution has relied upon the statement of two drivers of the truck, who have allegedly loaded the truck with the stolen articles on 15.05.2022.
- (ii) Though the incident has occurred between 26.05.2022 to 27.06.2022, the FIR has been lodged on 15.07.2022 without giving any justification for the delay. When enquired with the investigating officer, he said that the informant has not given any justification for the delay.
- (iii) The statement of watchman has been recorded. He was posted at the site at Katol to look after the iron articles. His statement indicates that the material was brought on the site in the first week of March 2022. Thereafter, after 5-6 days, the applicant – Jani Sardar came at the site. He had brought two Eicher trucks with 8 to 11 labours and also a crane. He informed the witness that the iron articles are required at the site at Kalmeshwar and the articles

were then loaded in the truck with the help of crane. The trucks thereafter proceeded towards Kalmeshwar. The witness states that since Jani was working in the same company he did not question the requirement of material at Kalmeshwar.

If the statement of this witness is to be believed, the iron articles were brought at the site in the 1st week of March and the first part of the theft was committed after 5-6 days, i.e. in 2nd week of March. The witness further states that the applicant – Jani Sardar has thereafter came to site 5-6 times and took away material for Kalmeshwar. In July, the owner of the company came at the site. The witness narrated the incident to him. The owner informed the witness that Jani Sardar has stopped coming on duty for last three months. Thus, the owner came to know that Jani is responsible for the crime and along with Jani there were 8 to 10 persons, who have loaded the trucks. Despite this status, the FIR has been lodged against unknown persons. At least the name of Jani was expected in the FIR. The absence of name of Jani in the FIR coupled with the fact that there is delay in lodging the FIR is something that would require detail investigation. I am informed that similar such incident has occurred at the other site of the owner and during the same period. Thus accused Jani and others have continued to commit theft at couple of site for couple of months and nobody has realized this fact and upon informing said theft

to the owner, he keeps mum for considerable period, is something that would require attention of the investigating officer.

- (iv) In Criminal Application (ABA) No.213/2022, this Court vide order dated 03.04.2023 has directed investigating officer to conduct the investigation in terms of guidelines issued by the Hon'ble Apex Court **Satender Kumar Andi V/s Central Bureau of Investigation and another**; reported in **(2022) 10 SCC 51** and **Amesh Kumar V/s State of Bihar**, reported in **(2014) 8 SCC 273**. When enquired as to whether the decision to arrest or not arrest has been taken, learned APP, on instructions of the investigating officer, submits that the decision to arrest nine accused has been taken on 22.07.2022. When enquired as to when was role of Sanjay disclosed, the learned APP, on instructions, submits that the role was disclosed on 12.09.2022. At this stage learned counsel for the applicant-Sanjay, has invited my attention to the notice, undated, of the month of September 2022, issued by the investigating officer calling upon Sanjay to appear before him on 07.09.2022. Thus, it is obvious that the role of Sanjay was disclosed prior to 07.09.2022. When enquired as to when was the decision 'not to arrest' Sanjay taken, learned APP, on instructions, submits that the decision is not taken. Thus, without taking decision to not arrest Sanjay, the notice has been issued to him. There is thus complete defiance of the order passed the

Hon'ble Supreme Court, in which the Court has issued directions that the decision ought to be taken at the earliest and if the decision to not arrest is taken, the said decision shall be communicated to the concerned Magistrate within two weeks from the date of institution of the case/ FIR.

- (v) The statement of witnesses collected till today only indicate that the stolen articles were lifted from Katol and dropped in the godown of Dilip Sahu. The evidence on the point of transportation of the stolen material from the godown of Dilip Sahu to Ramsons Company is not yet collected. The involvement of Salim Bax is only on record. He expired and therefore there is no further development.
- (vi) The investigating officer was reminded of the fact, vide dated 23.03.2023 in Criminal Application (ABA) No.699/2022, that this Court has in the year 2011 issued directions to maintain the case diary in terms of Section 172 (1)(1-B) of the Code of Criminal Procedure, 1973 (for short, 'Code') and that the case diary ought to be paginated. The case diary is not paginated till today.

6. The above defects/lapses would indicate that the FIR has been registered on 15.07.2022, stating therein that the iron articles were lying at site on 26.05.2022. The iron articles have been stolen between 26.05.2022 to

27.06.2022. The investigating agency, for the first time, today has come with a case that the part of theft has been committed on 02.05.2022 and 15.05.2022. That apart, if the statement of watchman is to be believed the first part of theft has occurred in the second week of March 2022. This story is unbelievable.

7. Further, the watchman has informed the owner that the applicant – Jani Sardar and others have stolen the iron articles. Despite this disclosure, the FIR, which is lodged by the Manager of the company, has been lodged against unknown persons. There is no justification given even today as to why is the name of Jani Sardar not mentioned in the FIR. The theft has been committed for couple of months not only at the site at Katol but also at some other site, however, no one has realized this fact.

8. Further, the investigating officer, vide order dated 23.03.2023 in ABA No.699/2022, was directed to conduct the investigation in terms of guidelines issued by the Hon'ble Supreme Court in **Satender Kumar's** and **Arnesh Kumar's** case. The role of Sanjay is claimed to have been disclosed on 12.09.2022, however, the investigating officer has issued him notice to remain present before him on 07.09.2022. This notice has been given without taking a decision not to arrest him. This again is unpardonable lapse. It appears that the decision to arrest nine accused has been taken on 22.07.2022. Four accused were arrested. However, the decision to arrest or not to arrest the other accused has not been taken till today.

9. Further, learned APP could not point out any cogent material to show that the iron articles that were stolen and stored in the godown of Dilip Sahu has been transported to Ramsons Company, where the applicant-Sanjay is working. Despite this, Sanjay was not arrested. So far as applicant – Jani Sardar is concerned, decision to arrest him has been taken on 22.07.2022. No protection was granted to Jani, at least till 04.10.2022. Nothing prevented the investigating officer from arresting him.

10. Thus, not only that the guidelines issued by the Hon'ble Supreme Court in aforesaid rulings been not complied but the case diary has also been not paginated in terms of Section 172 (1)(1-B) of the Code though the investigating officer was reminded of the said fact, vide dated 23.03.2023 in ABA No.699/2022.

11. At this stage, learned APP submits that custodial interrogation of the applicant – Jani Sardar is of utmost importance and that no relief be granted to him. This request cannot be acceded to, for the reason that the owner of Ramsons Company had for the reason best known to him thought it proper to not name Jani in FIR, that too when he is said have committed similar such theft at the other site as well. Further, there is delay in lodging FIR, which the investigating officer is unable to explain. These are the questions, which the investigating officer ought to have asked the informant at the first go. Further, nothing prevented the investigating officer from arresting this applicant prior to October 2022 for which also no convincing reason is coming-forth.

12. Considering these apparent deficiencies, I am of the considered view that the applicants will have to be granted anticipatory bail, particularly when some co-accused have been released on regular bail and some have been granted anticipatory bail.

13. The observations made in this order are *prima facie* and are made for deciding the present application only. The learned trial Judge shall not get influenced by the above observations.

14. Hence, the following order is passed:

ORDER

(i) The applications are allowed.

(ii) In the event of arrest in in Crime No.514/2022 registered with Police Station, Katol, District Nagpur for the offence punishable under Sections 379, 411, 120B read with Section 34 of the Indian Penal Code and under Section 126 of the Maharashtra Police Act, applicants-Sanjay Rambarose Singh Kashyap and Sheikh Muhammad Jani Sardar Sheikh, be released on bail on they furnishing PR. Bond in the sum of ₹25,000/- each with one surety in the like amount.

(iii) The applicants shall attend the Police Station, Katol, District Nagpur on 2nd, 3rd and 4th May, 2023 between 3.00 pm to 6.00 pm and thereafter as and when called for by giving 48 hours prior writing notice, till filing of the charge-sheet. After filing of the charge-sheet, the

applicants shall regularly attend the Court and cooperate the learned trial Court to complete the trial for the above offences. The applicants shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(iv) The applicants shall cooperate in the investigation.

(v) The applicants shall, at the time of execution of bond, furnish their address and telephone/mobile number(s) to the Investigating Officer and to the Court concerned and shall not change the same till the final disposal of the case.

(vi) The applicants shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(vii) The applicants shall maintain law and order.

(viii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The applications are disposed of.

(Anil L. Pansare, J.)

Wagh