

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.432 OF 2023

Mahendra s/o Shivdas Sahare and another

Vs.

State of Maharashtra, through Police Station Officer, P.S. Kurkheda, District Gadchiroli

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

Court's or Judge's orders

Mr. R. M. Daga, Advocate for applicants.
Mr S. M. Ghodeswar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 14/07/2023

1. The present application is for grant of anticipatory bail in connection with Crime No.117/2023, registered at Police Station, Kurkheda, District Gadchiroli for the offence punishable under Sections 379, 188 read with 34 of the Indian Penal Code and Section 48(7) of the Maharashtra Land Revenue Code.

2. The applicants have apprehending arrest at the hands of police as the crime is registered at Kurkheda Police Station on an allegation that on 10.06.2023 at about 11.55 p.m. near Maldugi Kumbhipola, Sandghat, officials of Tahsildar, Kurkheda has noticed one tractor along with trolley bearing registration No.MH-33-V-3237 was carrying illegal sand and in the said trolley one brass of sand amounting of Rs.600/- was found to be stored illegally. The applicant No.2 was driving the said tractor

and upon inquiry, he told the officials that he did not possess any royalty/permission for said sand. Thereafter, applicant No.1 who is the owner of the said tractor/trolley came to the spot and fled away driving said tractor and trolley. Therefore, on 20.06.2023 a report came to be lodged against the present applicants at Police Station, Kurkheda.

3. It is contended by the applicants that with baseless allegations the crime is registered only because the applicant No.1 has not obeyed the directions of revenue officials. In fact, no such incident of carrying the illegal sand has taken place. The trolley attached to the tractor was vacant on the date of incident. The FIR is lodged after delay of ten days and no explanation is put forth for the said delayed FIR. The custodial interrogation of the present applicants is not required and hence, they be protected by granting anticipatory bail.

4. The State has raised strong objection on the ground that the custodial interrogation of the present applicants is required for seizure of the tractor.

5. Heard learned Counsel Mr. Daga for the applicants. He reiterated the contentions.

6. Learned APP submitted that the custodial interrogation is required for seizure of the tractor.

7. Having heard both sides and on perusal of the FIR, it reveals that the allegation against the present applicants is concerned, they were transporting the sand illegally without royalty/permission and on the day of incident there was one brass sand in the tractor which was carried without any permission. Now, the only contention of the State is that the custodial interrogation of the present applicants is required to seize the tractor. As far as the seizure of the tractor is concerned, physical custody of the present applicants is not required that can be taken care of by directing the applicants to produce the said tractor for the investigating purpose. There is no other ground raised by the State to deny protection to the present applicants.

8. In view of that, present application deserves to be allowed by imposing certain conditions. Hence, I proceed to pass following order.

(i) The application is allowed.

(ii) The applicants namely No.(1) **Mahendra s/o Shivdas Sahare** and No.(2) **Akash s/o Vitthal Kolhe** are released on bail in the event of their arrest, in connection with Crime No.117/2023, registered at Police Station, Kurkheda, District Gadchiroli for the offence punishable under Sections 379 and 188 read with 34 of the Indian Penal Code and Section 48(7) of the Maharashtra Land Revenue Code, on executing P.R. bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.

(iii) The applicant No.1 shall produce the tractor for investigating purpose and said period will be considered as his custody for the purpose of Section 27 of the Indian Evidence Act.

(iv) The applicants shall not induce, threat or promise any witnesses who are connected with the alleged crime.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkates