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

CRIMINAL APPLICATION (BA) NO.856/2023

Bhojraj Jivatya Dhurve and anr

..VS..

State of Mah., thr. PSO PS Ramtek, District Nagpur

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

Court's or Judge's Order

.....
Shri S.D.Chande, Counsel for Applicants.
Shri V.A.Thakare, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 05/12/2023

PRONOUNCED ON : 15/12/2023

1. By this application under Section 439 of the Code of Criminal Procedure, applicants are seeking bail in connection with Crime No.67/1 registered with the non-applicant/police station for offences punishable under Sections 9, 11, 27, 39, 48(1), 49-B, 51, and 52 of the Wild Life (Protection) Act, 1970.

2. The applicants are arrested on 21.6.2022 and since then they are in jail.

3. The crime is registered on the basis of report lodged by a forest officer on an allegation that on 26.6.2017, while on patrolling on Usripaar Kadbikheda Road, he witnessed applicants carrying two bags containing tiger bones, nails, and whiskers on a motorcycle. Immediately, they were arrested. During investigation, on the basis of statements of co-accused,

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involvement of applicants is revealed. As per the investigation, two tigers were killed by applicants, one by administering poison and another by electrocution. Third tiger died during territorial fight of tigers. The applicants along with co-accused cut body of tigers and removed parts of body and concealed. During the course of the investigation, in all 26 accused persons are found including applicant No.1 who is accused No.14 and applicant No.2 who is accused No.8. Applicant No.1, as per the allegation, lifted and concealed dead body of tiger, who died in territorial fight at Gaulighat Area of Forest Compartment No.671, and was taken in Compartment No.524 and cut into pieces. Thus, role of the applicants is revealed during investigation.

4. Learned counsel Shri S.D.Chande for applicants, submitted that applicants are innocent persons. They are implicated in the crime merely on the basis of confessional statements. There is no direct evidence to show involvement of applicants. The confessional statements of co-accused are not admissible. Besides confessional statements, no other material is collected by investigating officer. Now, the investigation is completed and chargesheet is filed. Hence, the application deserves to be allowed.

5. Learned Additional Public Prosecutor Shri

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V.A.Thakare for the State, strongly opposed the application on the ground that applicant No.1 has lifted dead body of tiger and also participated in cutting it into pieces and removing body parts. Applicant No.2 is also involved as confessional statement shows that he mixed the stupefying substance in the water in the forest and a tiger and a peacock died by drinking the said water. The peacock was cooked and ate by applicants and other co-accused and the tiger was cut into pieces and its body parts are removed. From confessional statements, details and description in what manner the crime was committed are revealed. The confessional statements are admissible under Sections 50(8) and (9) of the said Act. He submitted that considering *prima facie* material, the application deserves to be rejected.

6. Learned counsel Shri S.D.Chande for applicants, placed reliance on the order passed by this court in Criminal Application No.1102/2022 wherein the accused was released on bail.

7. After hearing learned counsel for applicants; learned Additional Public Prosecutor for the State, and going through evidence collected during the investigation, it reveals that co-accused Devidas Kumare and Babulal Kumbare were caught on

the spot by forest officers who were carrying bones, nails and whiskers of tigers. After they were taken into custody, on the basis of their confessional statements, involvement of applicants is revealed. It further reveals from investigation papers that at the instance of co-accused Devidas, two bones of tiger and one weapon like 'sattur' were seized. At the instance of the wife of accused Devidas, some body parts of tigers are seized from an agricultural field owned by the accused.

8. Insofar as applicant No.1 is concerned, from his confessional statement it reveals that applicants along with co-accused have lifted a dead tiger and took him in the forest area and cut him into pieces and removed his body parts. Applicant No.2 is involved in administering stupefying substance in the water at Gaulighat Area of Forest Compartment and by drinking the said water, one peacock and tiger died. The said peacock was used as meat and the body parts of the tiger were removed and concealed. The confessional statements of applicants and co-accused are recorded. From confessional statements of co-accused also role of applicants is revealed. The place where the dead body of the tiger was found was shown by applicant No.1 and the place where he lifted the dead body and cut into pieces and removed body parts is also shown by him. Applicant No.2 has shown the place near Gaulighat Area where he mixed

stupifying substance in the water.

9. Thus, *prima facie* material, which is collected during the investigation, shows involvement of applicants. The confessional statement of applicant No.1 specifically states about his role in the alleged incident.

10. Learned counsel Shri S.D.Chande for applicants, vehemently submitted that confessional statements of the accused and the co-accused are not admissible.

11. After going through the record and proceedings, it has come on record that after arrest of the accused, place of the incident was inspected by forest officers. Both applicants led forest officers to the spot and shown the alleged spot. The incriminating weapons are seized from the co-accused.

12. An important aspect, as regards admissibility and proof of confessional statements of applicants, on which the prosecution placed reliance, shows that confessional statements made before competent officers. As provided under Section 50(8) of the said Act, which is admissible in evidence, in view of the provision of Sub section 9 of Section 50 of the Act, the said provision is an exception to the general plea.

13. It is well settled law that confession made by accused during custody under Section 50(8) of the said Act, must be voluntary and truthful.

14. Only fact needs to be seen is, whether confessional statement is voluntary or not. A confessional statement is said to be voluntary if it is not caused by threat, inducement, torture or pressure. Before recording confessional statements, concerned officer is required to make an enquiry to ascertain whether the accused is under pressure, threat or inducement and why accused intends to make confession. The officer is required to give an understanding that he is not bound to make confession and despite such a warning, if he makes a confession, it could be used as an evidence against him in trial. The competent officer, before recording confession, is required on satisfying himself/herself that accused has made up his mind to confess crime committed by him/her.

15. The co-ordinate bench, in Criminal Revision Application No.174/2016 (Yogesh @ Yograj s/o Sakharam Kumbhare and ors vs. State) decided on 5.10.2023 considered scope and admissibility of confession recorded under Section 50(8) of the said Act and held that as provided under Section 50(9) of the said Act, the evidence recorded by authorized

officer under Section 50(8)(d) in the presence of accused is admissible in evidence. The guidelines are issued by the Wildlife Crime Control Bureau, Ministry of Environment and Forest Government of India published in a handbook for Wildlife Crime Investigation Officers and referred Clause No.6.28 which states that the evidentiary value of confessional statement depends on its voluntary character. A confession made under any inducement, threat or promise loses its credibility. Thus, a confession should be voluntary, true and trustworthy. It must be clear and unequivocal admitting the commission of the crime. The statement of the accused can be taken into considerations against another accused involved in the said crime, as per Section 30 of the Evidence Act. Clause No.6.30 shows that the confession should be recorded in the same language and exact words told by the accused.

The co-ordinate bench further held that statement recorded by the forest officers fall in the category of extra judicial confession and the same is admissible in evidence, provided the same is made voluntarily and there is other evidence to corroborate facts disclosed in the confession.

16. In the backdrop of the above well settled provisions, it is to be borne in mind that the said Act has its object. The

provisions under the said Act need to be borne in mind.

17. Here, in the present case, two co-accused are caught by forest officers, who have given their voluntary statements showing their involvement and involvement of applicants. The confessional statements show a specific role played by applicants coupled with fact that the body parts of tigers are recovered at the instance of co-accused. The statements of applicants and co-accused are voluntary and recorded after following due process of law. The crimes of killing the wild animals are committed for economic/financial gains.

18. Considering the *prima facie* material against applicants, the application deserves to be rejected and the same is **rejected**.

The application stands **rejected disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!