

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

ANTICIPATORY BAIL APPLICATION NO.259 OF 2024

Samir Kayyum QureshiApplicant
Versus
State of Maharashtra Respondent

Mr. Advait U. Shukla, Advocate i/b. Abdul Quadir Auti for the Applicant.

Ms. Mahalakshmi Ganapathy, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 31st JANUARY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R. No.730/2023 registered at Sadar Bazar police station, Solapur City on 11.11.2023 under Sections 307, 353, 427, 429 of IPC, under Sections 3 & 13 of the Maharashtra Keeping And Movement Of Cattle In Urban Areas (Control) Act, 1976, Sections 5, 9 & 11 of the Maharashtra Animal Preservation Act, 1976, Sections 11(1)(f),(h),(i),(k) of the Prevention of Cruelty to Animals Act, Sections 46 and 56 of the Transportation of Animal Act and Sections 83 and 177 of the Motor Vehicles Act.

2. Heard Mr. Advait Shukla, learned counsel for the Applicant and Ms. Mahalakshmi Ganapathy, learned APP for the Respondent-State.

3. The FIR is lodged by one Police Constable Vitthal Kalje attached to Sadar Bazar police station. He has stated that between the night of 10.11.2023 and 11.11.2023 he was on the patrolling duty. At about 5.14 a.m. one Komati called him and informed that one tempo carrying cattle was to pass through Gurunanak Chowk. The informant and others went to the spot and waited for the vehicle to arrive. At about 6.40 a.m., a tempo bearing No.MH 11 M 4789 came there. The police officers asked the driver to stop the tempo, but, the driver drove the tempo deliberately towards the police officers. It dashed into the police vehicle. The driver and his two associates ran away. The police officers were knowing the driver as he was having antecedents. The driver was the present Applicant. The persons with him were Kiran Bansode and Babu Gejage. All the three ran away. The police officers searched the tempo. They found that 21 cows were huddled inside the tempo in a cruel

manner. The vehicle and the cattle were taken charge of and this FIR was lodged.

4. Learned counsel for the Applicant submitted that the offence of Sections 307 and 353 of IPC are not attracted. The CCTV footage from the shop across the street captured the incident. In that incident there is nothing to show that the driver had driven that vehicle in a negligent manner or has caused any damage to the police vehicle. He submitted that except the offences under the Maharashtra Animal Preservation Act, 1976, all other offences under the Special Acts are bailable. There is nothing to show that the cattle were being taken for slaughtering. Mere transportation will not bring this offence within the purview of the Maharashtra Animal Preservation Act. He submitted that even as per the allegations the Applicant was merely a driver of the vehicle. He was neither the owner of the vehicle nor the owner of the cattle. Therefore, his custodial interrogation is not necessary.

5. Learned APP relied on the description of the incident given in the FIR itself.

6. I have considered these submissions. At this stage, it is difficult to observe regarding commission of offence punishable under Section 307 of IPC. As far as the offence under Section 353 of IPC is concerned, there does not appear to be any assault committed or any application of force by the accused on the police. As submitted by learned counsel for the Applicant, the other offences, except the offences under the Animal Preservation Act, are bailable. However, the offence under the Maharashtra Animal Preservation Act, 1976 are required to be considered seriously in the facts of the present case. Sections 5, 5A, 9 and 11 of said Act are important in this case. They read as follows :

“5. Prohibition of slaughter of cows, [bulls and bullocks]. Notwithstanding anything contained in any other law for the time being in force or any usage or custom to the contrary no person shall slaughter or cause to be slaughtered or offer for slaughter any cow [bull or bullock], in any place in the State of Maharashtra.

5A. Prohibition on transport and export of cow, bull or bullock for slaughter. - (1) No person shall transport or offer for transport or cause to be transported cow, bull or bullock from any place within the State to any place outside the State for the purpose of its slaughter in contravention of the provisions of this Act or with

the knowledge that it will be or is likely to be, so slaughtered.

(2) No person shall export or cause to be exported outside the State of Maharashtra cow, bull or bullock for the purpose of slaughter either directly or through his agent or servant or any other person acting on his behalf, in contravention of the provisions of this Act or with the knowledge that it will be or is likely to be slaughtered.

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9. Penalty for contravention of sections 5, 5A or 5B.-

Whoever contravenes the provisions of sections 5, 5A or 5B shall, on conviction, be punished with imprisonment for a term which may extend to five years, or with fine which may extend to ten thousand rupees, or with both:

Provided that except for special and adequate reasons to be recorded in the judgment of the court such imprisonment shall not be of less than six months and such fine shall not be less than one thousand rupees.

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11. Abetments and attempts.- Whoever abets any offence punishable under this Act or attempts to commit any such offence shall be deemed to have committed that offence and shall, on conviction, be punished with the punishment provided for such offence under section 9 [or section 9A]”

7. Section 10 makes all the offences under the said Act cognizable and non-bailable. Therefore, even an attempt to commit any offence under the Act under Section 11 is a non-bailable offence. The Applicant did not have any explanation for carrying such cattle in such cruel manner. There were no documents. There was nothing to show for what purpose these animals were being transported. Therefore, at this stage the investigating agency is not wrong in applying Sections 5, 9 & 11 of the Maharashtra Animal Preservation Act, 1976.

8. Considering all these aspects, the Applicant does not deserve to be protected under section 438 of Cr.P.C. His custodial interrogation is necessary to find out the *modus operandi* and the manner of commission of offence as well as to find out his other associates involved in the offence. No case for protection under Section 438 of Cr.P.C. is made out. The Application is rejected.

(SARANG V. KOTWAL, J.)