

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2209 OF 2024

Basantkumar Kapoorchand Jain ... Applicant
Vs.
State of Maharashtra ... Respondent

Mr. Niranjan Mundargi i/b. Mr. Kunal Ambulkar for Applicant.
Mr. Prasanna P. Malshe, APP for Respondent-State.
Ms. Shilpa Nimkar, API, Koregaon Park Police Station, Pune.

CORAM : MANISH PITALE, J.
DATE : AUGUST 08, 2024

P.C. :

. Heard Mr. Mundargi, learned counsel for the applicant and Mr.Malshe, learned APP for the respondent-State.

2. This application for anticipatory bail is filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) as the applicant apprehends arrest in connection with FIR No.0116 of 2024 dated 12.07.2024 registered with Koregaon Park Police Station, District - Pune City, for offences under Sections 3(5) and 132 of the Bharatiya Nyaya Sanhita, 2023 (BNS). The offence under Section 132 of the BNS pertains to assault or criminal force to deter public servant from discharge of his duty.

3. The informant in the present case is a *Tahsildar*, who had alleged that when he and his team were acting in pursuance of directions issued by this Court for removing encroachments, the applicant, termed as an encroacher in the FIR, obstructed the informant / *Tahsildar* from performing his duties and that the applicant allegedly incited other encroachers against the informant, who was performing his official duty.

4. The learned counsel for the applicant has invited attention of this Court to the order dated 30.11.2023 passed in Writ Petition No.8709 of 2023, whereby a specific direction was given for removal of encroachment on the concerned land. He has further invited attention of this Court to various documents to indicate that there is a dispute pending between the applicant and the petitioners in the said petition i.e. the Bijlanis. He submits that the official documents, as recently as of June 2024, indicate that police protection and arrangement was to be ensured for the applicant in the context of protecting the land in question. It is submitted that in this backdrop, the applicant could never be termed as an encroacher. It is further alleged that the informant and his team were acting at the behest of the Bijlanis to oust the applicant from the land in question, wherein he claims a legal right of possession. It is further brought to the notice of this Court that on the date of the incident, the applicant was deliberately called and kept waiting at Koregaon Park Police Station so that behind his back, his possession concerning the said land could also be taken away. In such a situation, it is submitted that the present application deserves to be allowed, particularly when the applicant undertakes to co-operate with the investigation.

5. On the other hand, the learned APP submits that there are specific allegations in the statement of the informant, which led to registration of the FIR. The ingredients of the offence under Section 132 of the BNS are clearly made out. Much emphasis is placed on the aforesaid order of the High Court, directing removal of encroachments within four months. It is also brought to the notice of this Court that there is one criminal antecedent against the applicant in the form of FIR No.225 of 2018 for offences under Sections 480, 461, 380 read with Section 34 of the Indian Penal Code, 1860 (IPC).

6. In this regard, the learned counsel for the applicant submits that in respect of the aforesaid FIR No.225 of 2018, the investigating authority itself has filed 'A' Summary. He fairly points out that there is another criminal antecedent i.e. FIR No.14 of 2019. But, with regard to the same, this Court has issued protective orders in favour of the applicant.

7. This Court has perused the statement of the informant leading to registration of the FIR. Since the informant is the *Tahsildar*, who claims to be performing official duty, it is necessary to examine as to whether the applicant could be *prima facie* held responsible for obstructing the informant from discharging his official duty.

8. The informant himself claims that he and his team reached the land in question in order to remove encroachments in furtherance of order dated 30.11.2023 passed by the Division Bench of this Court in Writ Petition No.8709 of 2023. The said order, no doubt, indicates that the encroachments were to be removed within four months from the date of the order. But, it is equally crucial that in the said order itself, the Division Bench of this Court has taken a note of the dispute between the Bijlanis on the one hand and the applicant on the other in respect of entitlement to the said land. It is further recorded that both, the Bijlanis as well as the applicant were in agreement that encroachments on the said land ought to be removed.

9. Perusal of documents on record at exhibit-D i.e. provisional possession receipt dated 30.01.2012; a letter dated 06.05.2013 issued by the official from the Department of Revenue and Forest to the Collector, Pune; as also a recent communication dated 15.06.2024 issued by the Deputy Secretary from the Department of Revenue and Forest, Government of Maharashtra to the Deputy Commissioner of Police, Pune, indicate that the authorities themselves have recognized the applicant as a person authorizedly in possession of the land in question.

In fact, the document at exhibit-E, being the communication dated 15.06.2024, requests the Deputy Commissioner of Police, Pune, to provide police help and *Bandobast* to the applicant for protecting the land in question. It is significant to note that a copy of the said communication was marked to the *Tahsildar* i.e. the informant in the present case.

10. In this backdrop, when the statement of the informant is perused, it shows that when the drive to remove the encroachment was undertaken, the applicant, being an “encroacher”, obstructed the informant / *Tahsildar* from performing his official duty. The basic premise on which the informant has proceeded, *prima facie*, appears to be fallacious and hence, the allegations made against the applicant appear to be without much substance. The applicant has specifically alleged that the informant was acting at the behest of the Bijlanis. This is not the forum to decide the said allegation.

11. Nonetheless, considering the aforementioned official documents brought to the notice of this Court, as also the fact that the Division Bench of this Court specifically took note of the claims made by the applicant with regard to the land in question, the allegation made against the applicant of being an encroacher *prima facie* appear to be without much substance.

12. The allegation made by the applicant that he was kept waiting at Koregaon Park police station, would depend upon the contents of the CCTV footage maintained by the police station. The concerned police station shall keep the CCTV footage, for the relevant period, available for the concerned court at the relevant point in time and hence this Court is not commenting upon the same.

13. In view of the above, the applicant has made out a strong *prima*

facie case in his favour and hence the application deserves to be allowed.

14. In view of the above, the application is allowed in the following terms:-

- A. In the event the applicant is arrested in connection with in connection with FIR No.0116 of 2024 dated 12.07.2024 registered with Koregaon Park Police Station, District - Pune City, he shall be released on bail on furnishing PR Bond of Rs.25,000/- [Rupees Twenty Five Thousand only] with one or two sureties in the like amount;
- B. The applicant shall remain present before the investigating officer as and when called by the investigating officer and he shall co-operate with the investigation;
- C. The applicant shall not influence the informant, witnesses or any person concerned with the case and he shall not tamper with the evidence.

15. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

16. The application is disposed of.

(MANISH PITALE, J.)

Minal Parab