

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

ANTICIPATORY BAIL APPLICATION NO. 2718 OF 2023

1. Ajinath Machindra Bhagade (Bagade)
2. Shriram Somgir Gosavi (Giri) ...Applicants
Versus
The State of Maharashtra ...Respondent

Mr. V. V. Purwant a/w Mr. Suraj Gadkari for the Applicants.
Mr. S. S. Chaudhari, APP for Respondent-State.
API Popat Baban Tilekar, Karmala Police Station present.

CORAM : M. M. SATHAYE, J.

DATED : 25th JULY 2025.

P.C.:

1. Heard Learned Counsel for the Applicants and Learned APP for the State.
2. This is an Application for pre-arrest bail in Connection with C.R. No. 541 of 2023 registered with Karmala Police Station, District-Solapur for offences punishable under Sections 353, 333 and 379 r/w. Section 34 of the Indian Penal Code, 1860 ("the IPC" for short) and Section 15 of the Environment Protection Act, 1986. Applicants are accused Nos. 2 and 3.
3. The complainant is Talathi – Mr. Mayur C. Kshirsagar, who was posted at Potegaon at the relevant time. It is alleged that the villagers of Potegaon and region around complained about illegal excavation and transportation of sand from the local river bed and therefore on 10/07/2023 at 12.30 in the midnight, the complainant along with Circle Officer – Mr. Anil Thakar,

Police-Patil Mr. Shirgire and Kotwal of Village-Potegaon Mr. Adsul were patrolling in Potegaon-Taradgaon-Balewadi area.

4. It is alleged that at that time, the complainant and his associate Circle-Officer-Thakar went to the Taradgaon area and at that time, Police-Patil-Shirgire and Kotwal-Adusul were patrolling in Potegaon area.

5. Thereafter, at about 3.45 am, Police-Patil-Shirgire called on phone and informed the complainant that when Police-Patil-Shirgire and Kotwal-Adusul were patrolling near Potegaon-Balewadi road, one red color tractor filled with sand came with trailer, which was intercepted by them. The said trailer was being driven by co-accused-Ganesh Shingte. At that time the present Applicants (Accused Nos. 2 & 3) came and intervened and pushed and shoved Police-Patil-Shirgire and Kotwal-Adusul and when attempt was made to stop the tractor from running away, tractor dashed against right hand of Police-Patil-Shirgire who fell down. Thereafter the Applicants and the co-accused-Shingte ran away. On such information given on phone, the complainant was called to Potegaon. Thereafter the complainant and Circle Officer-Thakar went to Potegaon and took Police-Patil-Shirgire to the government hospital where he was treated and it was informed that his right hand was fractured.

6. Learned Counsel for the Applicants submitted that the ingredients of section 353 of I.P.C. i.e. assault or criminal force to deter public servant from discharge of his duty, section 333 i.e voluntarily causing grievous hurt to deter public servant from his duty as well as section 379 i.e. theft, are not attracted. It is further submitted that Applicant No.1 runs a tea stall, near to where the tractor was intercepted. It is submitted that it was decided in the village that the wife of Applicant No.1 would be Sarpanch for next 2½ years.

However, other candidate one Amruta S. Naiknavare belongs to the rival group of Police-Patil-Shirgire and therefore when the wife of Applicant No.1 insisted with him to take resignation of Sarpanch Naiknavare, police-patil-shirgire refused to do so out of political rivalry and falsely implicated the Applicants so as to pressurize the wife of Applicant No.1 to withdraw the claim on the post of Sarpanch. It is contended that the Complainant who is Talathi is under the thumb of Police-Patil-Shirgire and therefore they have conspired to implicate the Applicants.

7. Learned APP on the other hand, on instructions of the Investigating Officer (who is present in the Court) opposed the grant of Anticipatory Bail Application. On the basis of investigation so far, of which papers are shown to the Court, it is submitted that the tractor or trolley is not yet recovered. It is submitted that the Applicants are not co-operating with the investigation and when they had attended the police station under earlier order of this Court, for answering questions, they have not given satisfactory answers and therefore custodial interrogation is required. He submitted that considering the gravity of the offence, the Anticipatory Bail Application be rejected.

8. Learned advocate for the Applicants submitted that statement of co-accused has no value as per section 25 of the Evidence Act. He submitted that it can not be considered.

9. I have considered the submissions and perused the record.

10. It is not disputed that the complainant is a public servant (Talathi), who has filed the FIR on the basis of information given by another public servant (Police-Patil) appointed under section 5 of the Maharashtra Village Police Act, 1967 ('MVP Act' for short). It is one of the duties of Police-Patil under section 6(vii) of the MVP Act to 'prevent within the limits of his

village the commission of offence and public nuisances, and detect and bring offenders therein to justice’.

11. Statement of Kotwal- Mr. Adsul recorded during the investigation, corroborates the narration in FIR. He has stated that Applicants told co-accused – Shingte to go away with tractor saying that they will manage everything and the driver of the tractor- co-accused-Shingte then ran away with the tractor and the Applicants ran away on their motorcycle. He has also stated that both the tractor and trolley were un-numbered. Injury certificate of Police-Patil-Shirgire indicates grievous injury to right forearm. Statement of co-accused – Shingte indicates that Applicant No.1 was an acquaintance who called him to drive a tractor and thereafter son of Applicant No.1 came on motorcycle to pick him up.

12. Firstly, there is no reason to disbelieve either statement of Talathi or the Police-Patil. Learned APP has specifically informed that during investigation it is found that the Police-Patil-Shirgire or his family is not involved in any political activities and therefore the case of false implication arising out of political rivalry appears unbelievable.

13. From the injury certificate, it is clear that the Police-Patil-Shirgire suffered grievous injury during the incident, when part of the tractor hit him when he was deterred from discharging his duty. There is apparently no reason to disbelieve the statement of Kotwal-Mr. Adsul; he is not co-accused. He is also a government servant working under Talathi.

14. So far as statement of co-accused-Shingte is concerned, true that it is inadmissible at the stage of Trial but at the stage of anticipatory bail application, when investigation is either at nascent or on-going stage, statement of co-accused can certainly provide a lead or clue or direction to

the investigation and to that extent its consideration is permissible. In **Satish B. Kanani Vs. State of Maharashtra** (ABA/2272/2021 order dated 23.09.2021), this Court has held as under :

“12. I have considered material placed before the Court as well as the law referred to by Mr.Upadhyay. While it is true that confession of co-accused or accused before police would be inadmissible for the purpose of trial and even can be left out for purpose of consideration of bail application, however at the stage of consideration of grant or refusal of anticipatory bail, it is the material derived from the investigation and therefore it gives lead to the police officers to carry out effective investigation. In this case as mentioned earlier, the statements given by Iftekar and Mahesh spell out the main role played by the present Applicant. Therefore it would be travesty of justice if the investigation is not carried out effectively in the absence of custodial interrogation of the Applicant. The police officers are not acting on some vague information, but there is a concrete material which is corroborated by the FIR itself.”

[Emphasis supplied]

15. In **Yazdi Darabsha Icchaporia Vs. State (2003 Cr.L.J. 2604)**, Gujarat High Court, while considering anticipatory bail application, has held as under :

“(7) RECENTLY, this Court has considered the question whether the statement of co-accused before the police implicating any person in the offence, can the police authority use such statement as clue while investigating the offence to reach the root of crime and the other accused persons. This Court has considered the said question and come to the conclusion that while investigating the offence and interrogating other accused persons, if any statement made during the investigation, that can be considered by the Investigating Officer as a clue while investigating the offence and / or root of crime. This Court has considered number of decisions of the Apex Court as well as this Court. Xxxxxx”

[Emphasis supplied]

16. In the present case, the co-accused has indicated that he was called by the Applicant No. 1 for driving tractor. This has material bearing on the role

of Applicant No. 1.

17. From the record shown to the Court, it appears that when the tractor carrying excavated sand was intercepted by a public servant doing his duty, the Applicants intervened and tried to help the co-accused in theft and transportation of sand and in the incident, a public servant was deterred and suffered grievous hurt. The offences involved are serious in as much as offence punishable u/s. 333 r/w 34 of I.P.C. can lead to imprisonment upto 10 years. Illegal sand excavation is a public menace and nuisance with punishment of imprisonment upto 5 or 7 years u/s. 15 of the Environment Protection Act, 1986.

18. In view of the aforesaid facts and circumstances, in my view, custodial interrogation of both the Applicants is necessary for a meaningful investigation.

19. The Anticipatory Bail Application is therefore rejected.

(M. M. SATHAYE, J.)