

(2016) 09 BOM CK 0191

In the Bombay High Court

Case No : Criminal Application [ABA] No. 543 of 2016

Manoj Vasantrya Jagtap

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 27-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Wild Life (Protection) Act, 1972 — Section 39(3)(a)(b)(c), Section 44(1)(b), Section 48(a), Section 49, Section 49B(1)(b), Section 50(9), Section 51, Section 9

Citation : (2017) ALLMRCri 679 : (2016) 6 MhLJCri 348

Hon'ble Judges : S.B. Shukre, J.

Bench : Single Bench

Advocate : Shri R.S. Kurekar, Advocate, for the Applicants; Shri S.J. Kadu, A.P.P, for the Non-Applicant/State

Final Decision : Dismissed

Judgement

S.B. Shukre, J. Heard the learned Counsel for the applicants and the learned A.P.P. for the State.

2. This is an application filed by the applicants seeking anticipatory bail in P.O.R. No.45/14, registered with the Conservator of Forest, Amravati for the offence punishable under Section 51 of the Wild Life Protection Act, 1972 ("the Act of 1972" for short) in relation to violation of Sections 9, 39(3)(a) (b)(c), 44(1)(b), 48(a), 49, 49B(1)(b).

3. At about 9:00 p.m. of 17/07/2016, the Forest Officers received an information that some people having illegally captured a wild animal, listed in the Schedule to the Act of 1972, killed it, cooked its meat and consumed it as food in a party organized in one agricultural field situated within the precincts of village Pimpalbhuta, District Amravati. After making necessary preparations for conducting raid, which took about 3 to 4 hours, the search team visited the agricultural field in the early hours of 18/07/2016 i.e. at about 01:00 a.m. and stumbled upon a few empty liquor bottles, animal bones and pieces of leftover

meat strewn in front of a hut erected in the field. The team also found one person Maroti Waghmare as present in the field. Upon inquiry, he told the members of the team that he was the caretaker of the field. When questioned more intensely, he spilled the beans giving all the details of what happened there in the evening of 17/07/2016. His disclosure revealed several such things as pointing out commission of a wild life offence. They were, in brief, thus the field was owned by father of applicant No.1; that applicant No.1 was there in the field since morning; that he told him that 56 persons from Amravati were going to descend on the field by evening, carrying with them "Ghorpad", a wild animal commonly known in English as Monitor Lizard, for being feasted on in a party that was to be held in the field later in the evening; that he was asked by applicant No.1 to make necessary preparations for cooking of the meat of the Monitor Lizard; that by 06:00 p.m. or 06:30 p.m. about 67 persons reached the field travelling in two separate cars; that by these cars, one dead Monitor Lizard and some other articles required for its cooking and also a few liquor bottles were brought to the field and that the Monitor Lizard was then de-skinned, cut smaller pieces, cooked and consumed by all these persons including both the applicants and said Maroti Waghmare. The statement of Maroti Waghmare was accordingly recorded by the Forest Officers and wild life crime was registered. Panchnama was drawn out and further investigation was carried out. It disclosed involvement of both these applicants. Now their custodial interrogation is being sought by the Forest Officers.

4. Shri Kurekar, learned Counsel for the applicants, submits that except for the statement of the co-accused, there is no evidence available on record showing prima facie involvement of the applicants in the crime registered against them and others. He submits that the statement of the co-accused cannot be considered as evidence recorded under Section 50(9) of the Act of 1972, as it has not been taken in the presence of these applicants. He further submits that since the bones, pieces of leftover meat, cooking articles, knife, axe and other relevant material have already been seized, the custodial interrogation of the applicants would not be required. He also submits that both the applicants are respectable persons of Amravati having roots in the society and do not have any criminal antecedents. Thus, he urges that both the applicants be released on anticipatory bail.

5. The learned A.P.P. for the State strongly opposing the application submits that the offence prima facie committed by the applicants is of a very serious nature having its repercussions on the interest of the society. He further submits that custody of the applicants is required as they have not revealed the source from where the Monitor Lizard was brought and who captured it. He further submits that it is also suspected that there could be a few more Monitor Lizards having been illegally removed from the forest by the applicants and, therefore, the case necessitates a deeper investigation to unearth the network of persons involved in poaching, selling and buying wild animals, which would be possible only when custody of the applicants is given. He further submits that now it is well settled

law that the Forest Officer not being a Police Officer, any confessional statement recorded by the Forest Officer is not hit by Section 25 of the Indian Evidence Act. He also submits that as the trial is not yet commenced, there is no application of Section 50(9) of the Act of 1972 at this stage, which is of investigation.

6. Upon going through the statements of the co-accused Maroti Waghmare as well as one more co-accused Vilas Dahake, I find that there is no substance in the argument of the learned Counsel for the applicants that no prima facie case is made out against these applicants. These statements prima facie affect not only Maroti Waghmare and Vilas Dahake but also the applicants and other accused. They show their participation in cooking the meat of the Monitor Lizard and its consumption as food by them. They also make revelations of all other relevant circumstances, showing together that, prima facie, both the applicants knowingly and willingly took part in acquiring illegal possession of a scheduled wild animal, keeping it in their possession and then destroying it by consuming its cooked meat as food. The applicant No.1, prima facie, allowed entry to the other co-accused his father's field along with the dead Monitor Lizard and then permitted its cooking and being savoured in his field and not only that he himself partook of the portion of the meat. The applicant No.2 also had the taste of the portion of the meat of the Monitor Lizard, which was brought to the field along with articles required for its cooking by two cars, one of which was owned by him. Cooking and consumption of the wild animal, the Monitor Lizard, as food resulted in its destruction as contemplated by law. The D.N.A. report of pieces of leftover meat seized from the spot of incident, prima facie, shows that this wild animal was the Large Bengal Monitor Lizard or *Varanus Bengalensis*, an endangered species, listed in Part-II of the Schedule-I to the Act of 1972. All these facts and circumstances thus, prima facie show that the various acts prohibited by Sections 39(3)(a)(b)(c) and 49 were committed by these applicants.

7. No doubt, the statements of Maroti Waghmare and Vilas Dahake have not been recorded in the presence of these applicants. But, the bar under Section 50(9) of the Act of 1972, would not be applicable at this stage. The bar, as this section shows, is on admissibility of the evidence in any subsequent trial before the Magistrate. The present stage is of investigation only. The bar comes alive when the evidence is not recorded in the presence of the accused person and has dual nature. Firstly, it applies to "evidence" recorded by an Assistant Director of Wild Life Protection or any other authorised officer under Section 50(8)(d) of the Act of 1972. Secondly, it operates against admissibility of such "evidence" in any subsequent trial before a Magistrate. The term "evidence" is not defined under this Act and, therefore, it would have to be understood by drawing assistance from the general law, the Indian Evidence Act, 1872. Section 3 of the Evidence Act defines "evidence" as meaning and including oral and documentary evidence. It calls all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry to be oral evidence. Here, we are concerned not with documentary but oral evidence for the purpose

of dealing with the objection taken by the learned Counsel for the applicants. So, the term "evidence" used in Section 50(9) or in Section 50(8) of the Act of 1972, would have to be understood as the recorded statement of a witness which can be permitted to be admitted in a subsequent trial before the Magistrate. If it is to be made admissible under this section, the further requirement would be that it must have been recorded by the officer authorised by or under Section 50(8) in the presence of the accused person. The expression "taken in the presence of the accused person" used in this section is meaningful. It removes all doubts and explicates the underlying idea. It postulates essentially a situation where there are two distinct entities present, one who is not the accused and who makes the statement and the other who is the accused who is present when the statement is made. That is the reason why it predicates the evidence to be recorded in the presence of the accused person. It then follows that Section 50(9) considers statements of persons other than the accused recorded in terms of Section 50(8) (d) only as evidence falling within its effulgence and excludes statements of the accused persons. Maroti and Vilas themselves are the accused persons. So, their statements would be out of the field of dominance of Section 50(9). Their statements, however, could be seen as confessions because they affect them and also reveal relevant facts. They have been made to a Forest Officer and not a Police Officer and, therefore, can be considered for ascertaining prima facie involvement of the applicants in the present crime. In the case of *State of Maharashtra v. Suraj Pal* decided on 12/12/2014 in Criminal Application No.99/2014, this Court has taken a view that confession made before the Range Forest Officer is not hit by Section 25 of the Evidence Act and, therefore, it can be read as a statement against the co-accused, as long as it discloses a relevant fact. The statements of the co-accused in the instant case do disclose relevant facts prima facie incriminating these applicants.

8. It has also been contended that no such acts as are prohibited under Sections 39(3)(a)(b)(c) and 49 of the Act of 1972 are prima facie disclosed by the statements of the co-accused. With due respect, I must say that the contention is not correct. Section 39(3)(a)(b)(c) prohibits such acts as illegally acquiring a wild animal or illegally possessing a wild animal or illegally having a custody or control over it. It also prohibits illegal transfer of a wild animal to any person or illegal destruction or damage being caused to the wild animal. Section 49 of the Act of 1972 prohibits illegal purchase of a wild animal or receiving or acquiring illegally a wild animal or meat derived from it. All these acts, I have already found, have been seen to be prima facie committed in this case. Of course, the Forest Officers have also alleged that other acts which are prohibited under Sections 44(1)(b), 48, 49B(1)(b) have been prima facie committed by these applicants. But, at this stage, there being no evidence available on record showing that the agricultural field, where meat of the Monitor Lizard was cooked and consumed, was also used as an eating house and that any of the co-accused were the licencees, who had unlawfully acquired the wild animal, I do not think that the acts prohibited by these sections could also be alleged against the

applicants.

9. All the facts and circumstances discussed above, *prima facie*, show that these applicants were involved in acquiring and keeping in their possession a wild animal, the Large Bengal Monitor Lizard or *Varanus Bengalensis* and also destroying it by its cooking and consuming as food in an illegal manner. Apart from the statements of the co-accused, the *panchnama* drawn out by the Forest Officers and seizures made by them also *prima facie* support what has been revealed by Maroti Waghmare and Vilas Dahake. The D.N.A. report, which is now available, as stated earlier, is positive for the Large Bengal Monitor Lizard or *Varanus Bengalensis*, listed in Part-II of Schedule-I to the Act of 1972, in the bones and meat pieces seized from the spot, thereby serving as further *prima facie* evidence against the applicants. Section 51 prescribes punishment for the acts prohibited by Sections 39(3)(a)(b)(c) and 49. If the prohibited acts are committed in relation to a wild animal, listed in Schedule-I, the offence is punishable with imprisonment for a term which is not less than three years and it may extend to seven years. Fine is also prescribed as an additional punishment. This nature of punishment makes the offence *prima facie* committed in this case as serious.

10. The seriousness of the crime in this case can be further realised if we consider its impact on the larger interest of the society. Today, human society is desperate to get adequate supply of water, leave alone unpolluted water, and pure air. Good forest ecosystems are treasure troves of these fundamental resources. If they are disturbed or twisted or tweaked, human society will be hard put to get these fundamental resources and that will push the human society to the brink of a crisis. The Large Bengal Monitor Lizard is an animal which is at the intermediate level in the food chain of the forest ecosystem. It is both a predator and a prey. It feeds on animals smaller than its size and itself serves as a food for the big guns of the forest. Thus, it plays an important role maintaining the balance and health of the forest ecosystem. So, any act which tantamounts to disturbing or destroying the forest ecosystem, the capturing and consuming a wild animal like the Large Bengal Monitor Lizard by humans is one such act, would ultimately adversely affect the societal interest. This Court has held in the case of the Suraj Pal (*supra*) that survival of a healthy forest ecosystem is of seminal importance for the survival of mankind itself and, therefore, these crimes cannot be considered to be of just any other crimes deserving no serious attention.

11. There is another dimension involved dimension of the origin and the network of persons involved in its poaching, selling it for profit and buying it for food, fun or fancy. So far, the Investigating Officer has not succeeded in unearthing the source and the place from where this Monitor Lizard has been procured and the manner in which it has been procured. All these aspects are required to be investigated in an effective manner. For this purpose, the custodial interrogation can help the Investigating Officer. Reason being that it is considered to be

different from mere inquisitorial interrogation in terms of its impact and output and can, in a case like this, prove to be a tool of immense value in reaching out to all those forces determined to remove biodiversity rich forests of India from it's precious geo-cultural milieu.

12. It is argued that the applicants belong to a class having respect and roots in the society. But, in my view, this argument, in the present crime, goes against them as it also asks them to be more responsible towards the society, which responsibility it appears, they have not shown so far, if one goes by the report of the Investigating Officer and that makes the prosecution case stronger for their custody. This would also give rise to a possibility of their misusing the liberty, if released on bail.

13. For all these reasons, I am not inclined to grant anticipatory bail to the applicants. The application stands rejected.

14. Authenticated copy of this order be supplied to the learned Counsel appearing for the parties.