

IN THE HIGH COURT OF ORISSA, CUTTACK

BLAPL NO. 2002 OF 2015

An application under section 439 of the Code of Criminal Procedure, 1973

Afjal Baig Petitioner

-Versus-

State of Orissa Opp. Party

For Petitioner: - M/s. Arijeet Mishra
S.K.Jena
S. Biswal
R. Mahato

For Opp. party: - Mr. Janmejaya Katikia
Addl. Govt. Advocate

BLAPL NO. 2024 OF 2015

Mirja Afjal @ Afjal Baig
@ Mallik Petitioner

-Versus-

State of Orissa Opp. Party

For Petitioner: - M/s. Arijeet Mishra
S.K.Jena
S. Biswal
R. Mahato

For Opp. party: - Mr. Janmejaya Katikia
Addl. Govt. Advocate

BLAPL NO. 3230 OF 2015

Afzal Baig	Petitioner
	-Versus-	
State of Orissa	Opp. Party

For Petitioner: - M/s. Arijeet Mishra
S.K.Jena
S. Biswal
R. Mahato

For Opp. party: - Mr. Janmejaya Katikia
Addl. Govt. Advocate

P R E S E N T :-

THE HONOURABLE MR. JUSTICE S.K. SAHOO

.....
Date of Argument: 07.08.2015 Date of order: 01.09.2015
.....

S.K.SAHOO, J. "The question is, are we happy to suppose that
our grandchildren may never be able to see
an elephant except in a picture book?"

-David Attenborough

Elephants are considered to be nature's unique masterpiece. People of our country worship the elephants as a form of Lord Ganesha. It is really bizarre that due to destruction of dense tropical forests which are the lungs of our planet and suitable habitat of these incredible animals, they are deprived of their foods and water resources. Even though the elephant

Census Report 2015 of Odisha released on 29.06.2015 indicates that population of elephants in Odisha increased from 1930 (recorded 2012 Census) to 1954 (recorded in 2015) but still large scale poaching of elephants in an organised manner mainly for ivory trade is causing an alarming situation. Such activity is no less than a violent and brutal crime.

2. The petitioner Afjal Baig in all these three bail applications i.e. BLAPL No.2002 of 2015, BLAPL No.2024 of 2015 and BLAPL No.3230 of 2015 has got a number of cases of elephants poaching in his credit. It appears on record that he is the real criminal mastermind behind all these crimes who utilises others for this purpose and indulges himself in illegal trading of ivory for making huge profit.

(i) BLAPL No.2002 of 2015 has been filed in connection with CID, CB, Odisha, Cuttack P.S. Case No. 20 dated 15.10.2014 registered under sections 429, 379, 120-B read with section 34 of Indian Penal Code and sections 25 and 27 of Arms Act, 1959 and section 51 of the Wild Life (Protection) Act, 1972 corresponding to G.R. Case No. 2493 of 2014 pending in the Court of learned S.D.J.M., Sambalpur.

The petitioner's prayer for grant of bail was turned down by the learned 1st Addl. Sessions Judge, Sambalpur vide order dated 03.02.2015 in Bail Application No.64/26 of 2015.

(ii) BLAPL No.2024 of 2015 has been filed in connection with CID, CB, Odisha, Cuttack P.S. Case No. 3 dated 20.2.2014 registered under sections 429, 379, 120-B of Indian Penal Code and sections 25 and 27 of Arms Act, 1959 and section 51 of the Wild Life (Protection) Act, 1972 corresponding to G.R. Case No. 117 of 2014 pending in the Court of learned S.D.J.M., Kuchinda.

The petitioner's prayer for grant of bail was turned down by the learned Addl. Sessions Judge, Kuchinda vide order dated 03.04.2015 in Bail Application No.45 of 2015.

(iii) BLAPL No.3230 of 2015 has been filed in connection with CID, CB, Odisha, Cuttack P.S. Case No. 4 dated 20.2.2014 registered under sections 429, 379, 120-B of Indian Penal Code and sections 25 and 27 of Arms Act, 1959 and section 51 of the Wild Life (Protection) Act, 1972 corresponding to G.R. Case No. 118 of 2014 pending in the Court of learned S.D.J.M., Kuchinda.

The petitioner's prayer for grant of bail was turned down by the learned Addl. Sessions Judge, Kuchinda vide order dated 09.06.2015 in Bail Application No.78 of 2015.

BLAPL No.2002 of 2015

3. On 15.10.2014 one Santosh Joshi, Divisional Forest Officer, Sambalpur Forest Division lodged a First Information Report before the Superintendent of Police, CID, CB, Odisha, Cuttack stating therein that an information was received on 25.07.2014 by the Range Officer, Padiabahal Forest Range and Forester, Badasahir Section that a wild male elephant was found dead in Kendrapat Reserve Forest near Dudkakud village of Padiabahal Range. On verification, a wild male elephant was found lying dead below the boundary line of Kendrapat Reserve Forest on 25.07.2014 and both the tusks were found cut and removed. The carcass of the elephant was seized and U.D. Case No. 06 of 2014-15 was registered by Sri Ramesh Chandra Padhi, Forester of Badasahir Section.

Autopsy was conducted on the carcass on 26.7.2014 by the Block Veterinary Officer of Jujumara Block. Forensic experts of State Forensic Science Laboratory, Rasulgarh, Bhubaneswar and R.F.S.L., Sambalpur arrived near the carcass on 26.7.2014 and collected necessary samples and also furnished spot visit report. The carcass was buried in a dugout pit observing all departmental procedures.

During inquiry, on the basis of reliable information, three accused persons namely Jogesh Lugun, Motilal Munda and Bipin Kishore Barua were apprehended on 30.7.2014. During interrogation, these three accused persons confessed that they along with accused persons namely Dhaneswar Hara, Ramesh Sanara, Kishore Sanara, Peon Hara and Tal entered inside Kendrapat Reserve Forest on 24.07.2014 for hunting tusker and stealing the tusks. Jogesh Lugun was carrying a country made muzzle loading gun with him. When the accused persons traced two tuskers inside Kendrapat Reserve Forest, Jogesh Lugun hunted both the tuskers one after another by firing from his gun. Though the first elephant was killed after two gun shots but the other elephant ran away with one gunshot wound. The accused persons then cut and removed the tusks from the carcass of the first killed elephant on 24.7.2014. On 25.7.2014 the accused persons located the second elephant lying dead and they also removed the tusks of that elephant. The accused persons further confessed that the tusks were cut into seven pieces and after some days accused Jogesh Lugun sold the tusks to the petitioner at Keonjhar and received Rs.72,000/- from him. Accused Motilal Munda had accompanied accused Jogesh Lugun to Keonjhar and

received Rs.11,000/- from accused Jogesh Lugun towards his share.

During course of inquiry, U.D. Case No.06 of 2014-15 turned to Padiabahal Forest Range OR No.25 of 2014-15 under section 51 of Wild Life (Protection) Act, 1972 and Range Officer, Padiabahal Forest Range seized cash of Rs.61,000/- and a country made muzzle loading gun from the house of accused Jogesh Lugun on 30.7.2014 and also seized cash of Rs.11,000/- from the house of accused Motilal Munda. One country made muzzle loading gun was seized from accused Bipin Kishore Barua on 30.7.2014.

Accused Jogesh Lugun, Motilal Munda and Bipin Kishore Barua were forwarded to the Court of learned S.D.J.M., Sambalpur in Padiabahal Forest Range OR Case No.25 of 2014-15 which was registered as 2 (b) C.C. No.10 of 2014 in the said Court.

In connection with the killing of the elephant whose carcass was detected on 01.08.2014, Padiabahal Forest Range OR Case No.26 of 2014-15 was registered.

Thus CID, CB, Odisha, Cuttack P.S. Case No.20 dated 15.10.2014 which refers to Padiabahal Forest Range OR Case No.25 of 2014-15 was registered against the petitioner and

eight other accused persons namely, Jogesh Lugun, Motilal Munda, Bipin Kishore Barua, Dhaneswar Hara, Ramesh Sanara, Kishore Sanara, Peon Hara and Tal.

After completion of investigation, charge sheet was submitted on 26.02.2015 under sections 429/379/411/120-B/34 of Indian Penal Code read with sections 25/27 of Arms Act and section 51 of Wild Life (Protection) Act, 1972 against all the nine persons against whom the FIR was registered keeping the further investigation open. The petitioner was arrested during course of investigation on 29.12.2014 and forwarded to Court on 30.12.2014.

The petitioner moved an application for bail before the learned 1st Addl. Sessions Judge, Sambalpur in Bail Application No.64/26 of 2015 and vide order dated 3.2.2015, the learned Court relying upon the confessional statement of accused Jogesh Lugun, the call detail register of the mobile phone of the petitioner as well as considering the gravity of the offence and holding the petitioner to be an inter-State trader of trophies of wild animals and elephant tusks and also taking note of the fact that the investigation by the Crime Branch was under progress, was not inclined to release the petitioner on bail and accordingly rejected the bail application.

BLAPL No.2024 of 2015

4. On 20.2.2014 one Sri N.K.Mahunta, Inspector of Police, CID, CB, Odisha, Cuttack lodged a First Information Report before the Superintendent of Police, CID, CB, Odisha, Cuttack stating therein that while inquiring into the incident of elephant poaching detected on 20.1.2014 inside Add-Kansar, Reserve Forest Landijharan Nala in Jamankira Forest Range under Bamara Wildlife Division, he verified the records of W.L. Jamankira U.D. Case No.7 of 2013-14 dated 20.1.2014 and during course of enquiry and verification, it came to light that on 20.1.2014 while Sri Ajit Kumar Rout, Forester of Jamankira Wildlife Beat was patrolling in his beat area at about 7 a.m. alongwith other forest officials, they found a heap of twigs near Landijharan Nala and they also detected the carcass of one tusker and the tusks were found removed. One accused Siman Toppo was arrested on the very day in connection with the case and W.L. Jamankira U.D. Case No.7 of 2013-14 turned to O.R. Case No.203 of 2013-14. It revealed from the statement of accused Siman Toppo recorded by the forest officials that ten days prior to his arrest, accused Naru Lakra divulged before him that he (Naru Lakra), Hina Badhei, Bhagi Oram and Manthu Minz had killed one elephant inside Add-Kansar Reserve Forest by

firing bullets at his legs and injuring the tusker. Then they followed the injured tusker and fired it by means of local made gun from close proximity and after death of the tusker, they cut the forehead portion and removed the valuable tusk for gain. Accused Naru Lakra further disclosed that the accused persons purchased local made guns from one Bhika Luhura for Rs.2000/- to 2500/-.

Thus CID, CB, Odisha, Cuttack P.S. Case No. 3 dated 20.02.2014 refers to O.R. Case No.203 of 2013-14 which was registered against accused persons namely, Naru Lakra, Hina Badhei, Bhagi Oram, Manthu Minz and Bhika Luhura.

During course of investigation, as per requisition of Ranger of W. L. Range, Jamankira, Sambalpur, local V.S. of Jamankira arrived at the spot and conducted post mortem over the carcass of the elephant and then the carcass was buried by the forest staff with the assistance of local police near the spot.

Initially on 14.4.2014, charge-sheet was submitted against four accused persons namely, Manthu Minz, Bhagi Oram, Hina Badhei @ Hemanta Suhula and Bhika @ Bhikari Benia @ Luhura under sections 379/429/120-B of IPC, sections 25/27 of Arms Act and section 51 of Wild Life (Protection) Act, 1972 keeping the investigation open under section 173(8) Cr.P.C. On

31.12.2014 further charge sheet was submitted against accused persons namely, Jogesh Lugun, Bipin Kishore Barua, Leha @ Dheeri Hembram under sections 379/429/120-B of IPC, section 25/27 of Arms Act and section 51 of Wild Life (Protection) Act, 1972 keeping the investigation open. On 13.3.2015 further charge-sheet was submitted against the petitioner under Sections 379/429/411/413/120-B of IPC, sections 25/27 of Arms Act and section 51 of Wild Life (Protection) Act, 1972 keeping the investigation open.

The petitioner was taken on remand in this case on 15.1.2015.

The petitioner moved an application for bail before the learned Addl. Sessions Judge, Kuchinda in Bail Application No.45 of 2015 and vide order dated 3.4.2015, the learned Court held that petitioner was getting his work done by poor labourers and he is the main accused for committing the offences and if he is released on bail, he would tamper with the prosecution evidence brought against him as well as against the other accused persons through whom he was killing the elephants and extracting the tusks. The learned Court considering the facts and circumstances of the case and also the gravity of the offences rejected the prayer for bail.

BLAPL No.3230 of 2015

5. On 20.2.2014 one R.N. Mohanty, Inspector of Police, CIC, CB, Cuttack lodged a First Information Report before the Superintendent of Police, CID, CB, Odisha, Cuttack stating therein that while inquiring into the incident of elephant poaching on 27.1.2014 inside Add-Kansar, Reserve Forest at Kadohar near Patabandha in Jamankira Forest Range under Bamra Wildlife Division, he verified the details of W.L. Jamankira U.D. Case No.08 of 2013-14 dated 27.1.2014 and other material documents available on record and during course of such enquiry and verification, it came to light that on 27.1.2014 while Kalileswar Nayak and others were performing patrolling at about 11.00 a.m., they detected carcass of a wild elephant inside Add-Kansar. On 7.12.2014 accused Siman Toppo was arrested and W.L. Jamankira U.D. Case No.8 of 2013-14 turned to O.R. Case No.203 of 2013-14. The said accused stated that ten days prior to his arrest, accused Naru Lakra divulged before him that he (Naru Lakra), Hina Badai, Bhagi Oram and Manthu Minj had killed the elephant inside Add-Kansar Reserve Forest and further disclosed before him that they tracked a herd of elephants and separated the tusker from its herd by firing bullets at legs and injuring the tusker and then they followed the injured tusker and

drove it towards Add-Kansar Reserve Forest where they shot the tusker by means of local made gun from close proximity and after death, they cut the forehead portion and removed the valuable tusks for gain. It was further disclosed that the accused persons purchased local made guns from one Bhika Luhura for Rs.2000/- to Rs.2500/-.

Thus CID, CB, Odisha, Cuttack P.S. Case No.4 dated 20.02.2014 refers to O.R. Case No.203 of 2013-14 which was registered against accused Naru Lakra, Hina Badhei, Bhagi Oram, Manthu Minz and Bhika Luhura.

Initially on 11.4.2014, charge-sheet was submitted against four accused persons namely, Manthu Minz, Bhagi Oram, Hina Badai @ Hemanta Suhula and Bhika @ Bhikari Benia @ Luhura under sections 379/429/120-B of IPC, sections 25/27 of Arms Act and section 51 of Wild Life (Protection) Act, 1972 keeping the investigation open under section 173(8) Cr.P.C. On 24.10.2014 further charge sheet was further submitted against Jogesh Lugun, Bipin Kishore Barua under sections 120-B/379/429/34 of IPC, sections 25/27 of Arms Act and section 51 of Wild Life (Protection) Act, 1972 keeping the investigation open. On 29.12.2014 charge sheet was submitted against Lelha @ Dheeri Hembram under Section 120-B/379/429/34 of IPC,

sections 25/27 of Arms Act and section 51 of Wild Life (Protection) Act, 1972 keeping the investigation open. On 13.7.2015 further charge sheet was submitted against the petitioner under Sections 379/429/120-B of IPC, sections 25/27 of Arms Act and section 51 of Wild Life (Protection) Act, 1972 keeping the investigation open.

The petitioner was taken on remand in this case on 16.5.2015.

The petitioner moved an application for bail before the learned Addl. Sessions Judge, Kuchinda in Bail Application No.78 of 2015 and vide order dated 9.6.2015, the learned Court held that the petitioner was involved in number of cases for the offence under Section 51 of the Wild Life (Protection) Act by cutting the tusks of the tuskers after death and he is also the mastermind and involved along with other accused persons. The learned Court further held that there is prima facie case made out against the petitioner and submission of charge sheet is not a ground to release him on bail and accordingly rejected the prayer for bail.

6. Since the facts of the three bail applications are identical and the petitioner is the accused in all the three cases and the allegations against the petitioner are also similar in

nature, with the consent of the parties, all the three bail applications were heard analogously and the same are disposed of by this common order.

7. The learned counsel for the petitioner Mr. Arijeet Mishra contended that the petitioner was first arrested in connection with CID, CB, Odisha, Cuttack P.S. Case No.20 of 2014 on 29.12.2014 and forwarded to the Court on the next day and thereafter he was taken on remand in the other two cases i.e., CID, CB, Odisha, Cuttack P.S. Case No. 3 dated 20.02.2014 and CID, CB, Odisha, Cuttack P.S. Case No.4 dated 20.02.2014 on 15.1.2015 and 16.5.2015 respectively. The learned counsel for the petitioner further submitted that the petitioner was also taken on remand in CID, CB, Odisha, Cuttack P.S. Case No. 5 of 2014 with almost similar allegations and he has been released on bail in the said case by this Court in BLAPL No. 1776 of 2015. Similarly after his arrest, the petitioner was taken on remand in CID, CB, Odisha, Cuttack P.S. Case No.21 of 2014 in which he has been released on bail by the learned Sessions Judge, Sambalpur on 02.06.2015. Mr. Mishra further contended that co-accused Jogesh Lugun who alleged to have killed the elephants as well as accused persons Motilal Munda and Bipin Kishore Barua have already been released on bail. He further contended

that no tusk has been recovered from the possession of the petitioner and therefore the confessional statement of co-accused Jogesh logun is not corroborated by any other evidence. He further contended that when the co-accused persons against whom more serious allegations like killing of the elephants and removing their tusks are there, have been released on bail and the petitioner has been released on bail in two similar cases in which he was taken on remand after his arrest, keeping in view the nature of materials available on record against the petitioner, he should also be released on bail on the ground of parity and equity.

The learned counsel for the State Mr. Janmejaya Katikia, Addl. Govt. Advocate on the other hand submitted that the petitioner is the mastermind and kingpin behind killing of number of elephants and the co-accused persons were just acting under his instruction. He further submitted that after submission of charge sheet in all these three cases, the further investigation under section 173 (8) Cr.P.C. was kept open for recovering the stolen tusks and also for collecting further evidence against the culprits. The learned counsel further submitted that in CID, CB, Odisha, Cuttack P.S. Case No.5 of 2014, charge sheet has been submitted against the petitioner

and Jogesh Lugun. He also submitted that Barkote Range OR Case No.261 of 2010-11, prosecution report has been submitted against the petitioner and five others which is pending in the Court of learned S.D.J.M., Deogarh. Learned counsel further submitted that in CID, CB, Odisha, Cuttack P.S. Case No.21 of 2014 which has been registered against the petitioner, the investigation is under progress. The learned counsel further submitted that confessional statement of a co-accused before a forest official can be taken into consideration in a case of this nature. He further submitted that when number of male elephants have been killed and there are prima facie materials against the petitioner to have played pivotal role in the killing of such elephants and illegal trading of tusks and the investigation is under progress and trading link is yet to be established, it would not be proper to release the petitioner on bail at this stage which would otherwise hamper the progress of investigation.

8. On perusal of the charge sheet submitted in CID, CB, Odisha, Cuttack P.S. Case No.20 of 2014, it reveals that the petitioner was taken into custody on 29.12.2014 mainly basing on the confessional statements of the co-accused persons. It further appears that the petitioner and the other co-accused persons hatched out criminal conspiracy to hunt tuskers and

steal the tusks for gain and accordingly the co-accused persons entered inside Kendrapat Reserve Forest on 24.7.2014 and committed the offence by killing two elephants. It further reveals that one Scorpio Vehicle which was used in the crime, two motor cycles and one cell phone were seized from the possession of the petitioner. The call records of the mobile phone used by the petitioner indicates that he had made frequent calls to the mobile phones of co-accused Jogesh Lugun and Bipin Kishore Barua prior to and after the occurrence which prove the conspiracy between the accused persons to commit the crime. The charge sheet further reveals that further investigation has been commenced to collect further evidence against the culprits.

9. The learned counsel for the State produced the confessional statement of the co-accused persons namely Jogesh Lugun as well as Bipin Kishore Barua so also the call details of the mobile phones of the petitioner as well as co-accused persons namely Jogesh Lugun and Bipin Kumar Barua during the relevant period. He also placed the account statements of the petitioner to substantiate that the petitioner has earned heavy profit due to illegal trading activity.

To counter the argument, the learned counsel for the petitioner Mr. Mishra contended that the confessional statement

of co-accused persons has got no evidentiary value and therefore cannot be acted upon. He placed reliance in the case of **Rama Chandra -v- State of Uttar Pradesh reported in AIR 1957 SC 381** wherein it is held that under section 30 of Evidence Act, confession of a co-accused can be taken into consideration but it is not in itself substantive evidence. However the Hon'ble Court further observed that even excluding the confession as substantive evidence, there is enough material against appellant Ram Bharosey to find him guilty of the offence for criminal conspiracy to commit the offences of kidnapping and extortion along with appellant Ramachandra. The learned counsel further placed reliance in case of **Haricharan Kurmi -v- State of Bihar reported in AIR 1964 SC 1184** wherein it is held that section 30 of the Evidence Act provides that a confession may be taken into consideration not only against its maker, but also against a co-accused person. It is further held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person and in dealing with a case against an accused person, the Court cannot start with the confession of co-accused person and it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to guilt and effect of the said evidence, then it is

permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

The learned counsel further placed reliance in case of **Haroom Haji Abdulla -v- State of Maharashtra reported in AIR 1968 SC 832** wherein it is held that once the confession is proved satisfactorily, any admission made therein must be satisfactorily withdrawn or the making of it explained as having proceeded from fear, duress, promise or the like from someone in authority. A retracted confession is a weak link against the maker and more so against a co-accused.

10. The confessional statements of co-accused Jogesh Lugun and Bipin Kishore Barua were recorded separately by Managobinda Dalei, Assistant Conservator of Forest, Sambalpur Forest Division during investigation of Padiabahal Forest Range O.R. Case No. 25 & 26 of 2014-15 on 11.08.2014 and 12.08.2014 respectively in presence of other forest officials. Co-accused Jogesh Lugun has put his LTI and co-accused Bipin Kishore Barua has put his signature on their respective confessional statements.

Now the questions have cropped up whether these confessional statements have got any evidentiary value and

whether they can be taken into consideration at the bail stage against the petitioner.

Section 25 of Evidence Act, 1872 states that no confession made to a police officer shall be proved as against a person accused of any offence. Inadmissibility of a confessional statement made to a police officer under section 25 of the Evidence Act is based on the ground of public policy. In order to avoid the danger of admitting false confessional statements obtained by coercion, torture or ill-treatment, such a provision has been made declaring confessions made to a police officer inadmissible. The officer in charge of a police station and the police officers have been empowered under Code of Criminal Procedure, 1973, inter alia, not only to investigate the cognizable cases but also the non-cognizable cases with the order of the Magistrate. The officer in charge of a police station is also empowered to submit the police report on completion of investigation to the Magistrate empowered to take cognizance of the offence on such report.

Section 50 of the Wild Life (Protection) Act, 1972 empowers any Forest Officer or any Police Officer not below the rank of a sub-inspector, power of entry, search, arrest and detention in order to prevent and detect the offences. Section 50

(8) of the said Act empowers any officer not below the rank of an Asst. Director of Wild Life Preservation or an officer not below the rank of Assistant Conservator of Forests authorized by the State Government. in that behalf to issue search warrant, to enforce the attendance of witnesses, to compel the discovery and production of documents and material objects and to receive and record evidence for the purpose of making investigation into any offence against any provision of the Act. The evidence recorded under clause (d) of sub-section (8) shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of the accused person.

There is nothing in the Wild Life (Protection) Act, 1972 conferring all the powers of an officer in charge on Assistant Conservator of Forest much less any provision that such officer shall be deemed to be an officer in charge of a police station even though some of the police powers have been conferred on him to be exercised in specified context. Powers are conferred mainly for prevention and detection of offences. Considering the nature of the power he exercises or the character of the function he performs, these powers and functions would not make an Assistant Conservator of Forest a

'police officer' within the meaning of Section 25 of the Evidence Act.

In case of **Badku Joti Savant –v- State of Mysore** reported in **AIR 1966 SC 1746**, it is held as follows:-

“11. In any case unlike the provisions of section 78(3) of the Bihar and Orissa Excise Act, 1915, section 21(2) of the Act does not say that the Central Excise Officer shall be deemed to be an officer-in-charge of a police station and the area under his charge shall be deemed to be a police station. All that section 21 does is to give him certain powers to aid him in his enquiry. In these circumstances, we are of the opinion that even though the Central Excise Officer may have when making enquiries for purposes of the Act powers which an officer-in-charge of a police station has when investigating a cognizable offence, he does not thereby become a police officer even if we give the broader meaning to these words in section 25 of the Evidence Act.....In this view of the matter, the statement made by the appellant to the Deputy Superintendent of Customs and Excise would not be hit by section 25 of the Evidence Act and would be admissible in evidence unless the appellant can take advantage of section 24 of the Evidence Act.”

A Constitution Bench of the Supreme Court in case of **Ramesh Chandra Mehta –v- State of West Bengal** reported in **AIR 1970 SC 940** held that Customs Officer is not a Police

Officer for the purpose of Section 25 of the Evidence Act. Their Lordships have stated thus:

“5.....The Customs Officer does not exercise, when enquiring into a suspected infringement of the Sea Customs Act, powers of investigation which a police-officer may in investigating the commission of an offence. He is invested with the power to enquire into infringements of the Act primarily for the purpose of adjudicating forfeiture and penalty. He has no power to investigate an offence triable by a Magistrate, nor has he the power to submit a report under Section 173 of the Code of Criminal Procedure. He can only make a complaint in writing before a competent Magistrate.

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24. In certain matters, the Customs Act of 1962 differs from the Sea Customs Act of 1878. For instance, under the Sea Customs Act, search of any place could not be made by a Customs Officer on his own accord; he had to apply for and obtain a search warrant from a Magistrate. Under Section 105 of the Customs Act, 1962, it is open to the Assistant Collector of Customs himself to issue a search warrant. A proper officer is also entitled under that Act to stop and search conveyances; he is entitled to release a person on bail, and for that purpose has the same powers and is subject to the same provisions as the officer-in-charge of a police station is. But these additional powers with which the Customs Officer is invested under the Act of 1962 do not, in our judgment, make him a police

officer within the meaning of Section 25 of the Evidence Act. He is, it is true, invested with the powers of an officer-in-charge of a police station for the purpose of releasing any person on bail or otherwise. The expression "or otherwise" does not confer upon him the power to lodge a report before a Magistrate under Section 173 of the Code of Criminal Procedure. Power to grant bail, power to collect evidence, and power to search premises or conveyances without recourse to a Magistrate, do not make him an officer-in-charge of a police station, Proceedings taken by him are for the purpose of holding an enquiry into suspected cases of smuggling. His orders are appealable and are subject also to the revisional jurisdiction of the Central Board of Revenue and may be carried to the Central Government. Powers are conferred upon him primarily for collection of duty and prevention of smuggling. He is for all purposes an officer of the revenue.

25. For reasons set out in the judgment in Criminal Appeal No. 27 of 1967 and the judgment of this Court in Badku Joti Savant's case, AIR 1968 SC 1746, we are of the view that a Customs Officer is under the Act of 1962 not a police officer within the meaning of Section 25 of the Evidence Act and the statements made before him by a person who is arrested or against whom an inquiry is made are not covered by Section 25 of the Indian Evidence Act."

The Madras High Court in case of **E. C. Richard -v-**

Forest Range Officer reported in AIR 1958 Mad 31

considered whether a Forest Range Officer under the Madras Forest Act is a Police Officer for the purpose of Section 25 of the Evidence Act. It was held that the Forest Officer is on a par with the Customs Officer and hence what applies to the Customs Officer applies to the Forest Officers also. It has been observed by Somasundaram, J. in the said decision that "in the absence of a specific provision in the Madras Forest Act conferring on the Forest Officer all the powers of an Officer-in-Charge of a Police Station, he cannot be called a 'Police Officer' and a statement made to him will not be hit by Section 25 of the Evidence Act". Neither the Kerala Forest Act nor the Wild Life Protection Act conferred all the powers of Police Officers on the Forest Officers or wild life protection force even though some of the powers have been conferred on them to be exercised in specified contexts. It is therefore clear that the embargo contained in Section 25 of the Evidence Act cannot be applied to the statements made to a Forest Officer or Range Officer etc.

In case of **Forest Range Officer -v- Aboobacker & another reported in 1989 Criminal Law Journal 2038,**

Hon'ble Justice K.T. Thomas, J. held as follows:-

"7. The most important item of evidence in this case is the confessional statement made by the respondents. The admissibility of the confession made to the Forest Range Officer is

not open to doubt since the embargo contained in Sec. 25 of the Evidence Act is not applicable to it. Forest officers, though they are invested with some of the police powers, are not police officers. Hence they can give evidence before Court regarding admissions or confessions made to them by accused persons, whether or not such persons were then in custody. If the Court considers such confession to be reliable, there is no legal bar in acting on such confession”.

In case of **Dr. Emerico D'Souza -Vs.- State reported in 1995 (1) Bombay Case Reporter 266**, it is held as follows:-

“13. The Range Forest Officer has clearly stated that these were the statements made by the respective accused persons, including the petitioner and hence there was prima facie offence established against the petitioner. It must also be observed that the statements made by the accused are not confessions under section 25 of the Evidence Act. The same can be read as the statements against the co-accused. It is only the confession under section 25 of the Indian Evidence Act which cannot be read against the co-accused but such is not the situation in this case because the statements before the Range Forest Officer are not the statements recorded under section 25 of the Indian Evidence Act as the Range Forest Officer is not a police officer. In that light of the matter, it will have to be stated that this application has to be dismissed.”

In case of **Sardarkhan -Vs.- Range Forest Officer reported in 2006 (1) Maharashtra Law Journal 606**, a

Division Bench of Bombay High Court has held as follows:-

"11. The contention that statements recorded before the Forest Officer would not become admissible ipso facto, is fallacious. First, it must be seen that the Authorised Officer, considering confiscation of a vehicle, is conducting a quasi-judicial enquiry and does not require evidence in the strict sense to be tendered before him. Secondly, just as Authorised Officer is not a Criminal Court, the Forest Officer tendering material in support of prayer for confiscation is not a Police Officer. The learned special counsel for the respondents drew our attention to the decision of this Court in Dr. Emerico D'Souza v. State through The Deputy Conservator of Forest, reported in 1995 Forest Law Times 72. It was observed therein that a statement to a Forest Officer is not hit by Section 25 of the Evidence Act and can be read in evidence, as Forest Officer is not a Police Officer.

12. A quasi-judicial authority would be prevented from considering any material only if it is shown that consideration of such material is barred by any specific provision of law. Statements recorded by the Forest Officer do not fall in the category of "confession", since a confession could be made only by a person, who is accused of an offence confessing to his crime. Statements of some of the persons considered by the Authorised Officer in this case would be at the

best akin to admissions or former statements of witnesses, which would suggest an inference as to a fact in issue or relevant fact, namely, use of the tractor and trolley in commission of a forest offence. Therefore, there was no impropriety on the part of the Authorised Officer in considering the statements recorded by the Range Forest Officer."

In an unreported decision of Bombay High Court in case of **State -v- Francis Masrenhas passed in Criminal Revision Application No. 1 of 2015 decided on 22.06.2015,** it is held as follows:-

"9.....It is not in dispute that the confessional statement in question has been recorded by a Deputy Range Forest Officer, who was the Investigating Officer in the case. It is also not disputed that under Section 50(8) of the Act of 1972, the confessional statement can only be recorded by an Officer not below the rank of Assistant Director of Wild Life Preservation or an Officer not below the rank of Assistant Conservator of Forest, authorised by the State government in this behalf. The question is, whether in the face of such provision, the State can fall back upon Section 25 of the Evidence Act, in order to contend that in as much as the Forest Officers are not Police Officers, the confessional statement would be admissible.

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12. In *Motilal v. Central Bureau of Investigation* reported in (2002) 4 SCC 713,

the question before the Hon'ble Supreme Court was whether the offences punishable under the Act of 1972 can be investigated by the C.B.I. on being empowered by the Central Government. It was held that although Section 50 of the Act of 1972 does not exclude Police Officers from investigating the offence under the Act, the special procedure provided under the Act is contrary to the provisions contained in the Code of Criminal Procedure and as such, the same would prevail in view of Section 4(2) of the Code of Criminal Procedure. However, that would not exclude the rest of the provisions of the Act of 1972.

13. It can, thus, be seen that to the extent the Act of 1972 makes provision for a particular aspect as a special Statute, the same would override and prevail over the general provisions. It is trite that what cannot be achieved directly, cannot be allowed to be achieved indirectly. In the present case, there is a specific procedure laid down in the Act of 1972 for recording of evidence/confession by an Officer not below the rank of Assistant Director of Wild Life Preservation or an Officer not below the rank of Assistant Conservator of Forest, authorised by the State government in this behalf. Thus, the said provision cannot be allowed to be circumvented on the ground that the Forest Officers not being Police Officers could record the confession, as it would not be hit by Section 25 of the Evidence Act. Such a confession, if not hit by Section 25 of the Evidence Act, would certainly be against the letter and spirit of Section 50 (8) of the Act of 1972, which is a special enactment and which would prevail in the matter. In such circumstances, I do not

find any reason to interfere with the impugned judgment passed by the learned Sessions Judge.”

In case of **State of Maharashtra -V- Suraj Pal reported in 2015 (1) Bombay Case Reporter (Cri) 576**, it is held as follows:-

“14. So far as concerned the aspect of existence of reasonable grounds for believing that the accusations made against the non-applicant are true, as held in the case of Prahlaad Singh Bhati vs. NCT Delhi and another, (2001) 4 SCC 280, I must say that perusal of the confessional statements of the applicant and his co-accused reveal that there is sufficient material to prima facie find that the allegations made against the non-applicant apparently constitute an offence punishable under Section 51 read with other relevant sections, such as Sections 9, 39, 44, 49-B and 52 of the Wild Life (Protection) Act, 1972. Confessional statements, in particular, of the co-accused Sarju and the non-applicant himself are sufficient to indicate that, prima facie the offence alleged against the applicant is made out. They prima facie show that the non-applicant was not only in constant touch with the other co-accused involved in connection with wild life offences, but the non-applicant also gave his active support by making available funds and also ensuring that the efforts of hunters do not go waste in the sense that hunters were sufficiently rewarded by purchasing the skins, bones and claws of tigers. Now, it is well settled law that the confessional statements

made by the accused in forest or wild life offences are not hit by Section 25 of the Evidence Act as a forest officer is not a Police Officer within the meaning of Section 25. This view taken by the learned Single Judge of this Court as early as the year 1994 in the case of *Emerico D'Souza vs. State*, through the Deputy Conservator of Forests, reported in 1995 Forest Law Times 72 has been reiterated with approval by the Division Bench of this Court in the year 2005 in the case of *Sardarkhan s/o. Khalilkhan Pathan vs. Range Forest Officer, Yavatmal and others*, reported in 2006(1) Mh.L.J. 606.

15. Of course, learned counsel for the non-applicant would question consideration of the confessional statements of the other co-accused on the ground that in criminal law confessional statements of the co-accused are irrelevant for reaching any conclusion about involvement of the other accused persons in the crime alleged against them. This may be true in case of other offences wherein confessional statements are made by the co-accused before a Police Officer investigating the case. But, once it is found by following a consistent view that the Range Forest Officer is not a Police Officer, a confession made before the Range Forest Officer would not be a confession under Section 25 of the Evidence Act and would at best be akin to an admission or former statement of a witness suggesting an inference as to a fact in issue or relevant fact and, therefore, it can be read as a statement against the co-accused, as long as it discloses a relevant fact. Thus, even the confessional statements of the co-accused in a crime like the present can be considered and,

therefore, I find no substance in the said argument of learned counsel for the non-applicant.”

A confession of a person accused of any offence recorded by a police officer or in the custody of the police officer is inadmissible under Section 25 or 26 of the Evidence Act unless it is made in the immediate presence of a Magistrate. For the purpose of Section 27 of the Evidence Act, a part of statement recorded by the police officer, whether it amounts to confession or not, leading to the discovery of the fact becomes admissible in evidence. The statement of any person recorded by a police officer if it leads to the cause of the death of that person becomes admissible in evidence as dying declaration under Section 32 (1) of the Evidence Act. A bar is created for a police officer from recording of the confessional statement rendering it inadmissible in evidence but for any other officer, such as the Customs Officers, Railway Officers or Forest Officers, there is no such bar. Thus there is absolutely no bar created by law regarding the admissibility of the confessional statements recorded by the Forest Officials, during the course of investigation in a forest offence. Of course, the validity of such a statement recorded by the forest officer is open for being tested by the defence regarding the coming into being of the statement,

its veracity, validity and applicability of the same to the facts and circumstances encircling the whole case.

In view of the ratio of the abovementioned decisions and looking at the provisions of the Wild Life (Protection) Act, 1972, I am the view that Assistant Conservator of Forests who has recorded the confessional statements of co-accused Jogesh Lugun and Bipin Kishore Barua is not conferred with all the powers of an officer in charge of a police station and as such he cannot by any means be considered to be police officer and Section 25 of the Evidence Act cannot apply to him. There is absence of any materials at present that such confessional statements were made due to coercion, torture or ill-treatment. The confessional statements have been recorded in presence of other forest officials and co-accused Jogesh Lugun and Bipin Kishore Barua have put their LTI and signature respectively on such statements. Accordingly, I am of the view that the confessional statements made by those two co-accused persons before the Assistant Conservator of Forests are admissible in evidence and no doubt can be entertained pertaining to the admissibility of such confessional statements at this stage and as such there is no legal bar in acting on such confession. The merit of such evidence can be adjudicated at the stage of trial and the

petitioner is at liberty to take resort to section 24 of the Evidence Act at that stage to contend that those statements are not voluntary.

The decisions cited by the learned counsel for the petitioner are no way relevant to the points raised in this case.

11. Adverting as to whether the confessional statements of the co-accused persons can be taken into consideration at the stage of bail against the petitioner, the point is no more res integra.

In the case of **Kalyan Chandra Sarkar –v-Rajesh Ranjan @ Pappu Yadev reported in (2004) 7 Supreme Court Cases 528**, it is held as follows:-

“19. The next argument of the learned counsel for the respondent is that prima facie the prosecution has failed to produce any material to implicate the respondent in the crime of conspiracy.....The only other evidence available to the prosecution to connect the respondent with the crime is an alleged confession of the co-accused which according to the learned counsel was inadmissible in evidence.....Be that as it may, we think that this argument is too pre-mature for us to accept. The admissibility or otherwise of the confessional statement and effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled are

all matters to be considered at the stage of the trial”.

In case of **State of U.P. –v- Amarmani Tripathi reported in (2005) 8 Supreme Court Cases 21**, it is held as follows:-

“22. The contentions of the respondents that the confessional statement of Rohit Chaturvedi is inadmissible in evidence and that that should be excluded from consideration, for the purpose of bail is untenable.”

In case of **Muraleedharan –v- State of Kerala reported in AIR 2001 SC 1699**, it is held as follows:-

“4. According to the Sessions Judge “no material could be collected by the investigating agency to connect the petitioner with the crime except the confessional statement of the co-accused.” He also observed that “I do not think any prejudice will be caused to the prosecution in the event of granting him anticipatory bail especially when the petitioner has not so far been arrayed as an accused in the case.”

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7... We express our reprobation at the supercilious manner in which the Sessions Judge decided to think that “no material could be collected by the investigating agency to connect the petitioner with the crime except the confessional statement of the co-accused. Such a wayward thinking emanating from a

Sessions Judge deserves judicial condemnation. No Court can afford to presume that the investigating agency would fail to trace out more materials to prove the accusation against the accused. We are at a loss to understand what would have prompted the Sessions Judge to conclude, at this early stage, that the investigating agency would not be able to collect any material to connect the appellant with the crime. The order of the Sessions Judge, blessing the appellant with a pre-arrest bail order, would have remained as a bugbear of how the discretion conferred on Sessions Judges under section 438 of the Cr.P.C would have been misused."

In view of the law laid down by the Hon'ble Supreme Court, it cannot be said that the confessional statements of the co-accused persons cannot be looked into at all by the Court while adjudicating the bail matter.

12. Law is well settled that while passing orders on bail applications, detailed examination of the evidence and elaborate documentation of the merits of the case should be avoided and no party should have the impression that his case has been prejudged. To be satisfied about a prima facie case is not the same as an exhaustive exploration of the merits in the order itself. When the application is made at the investigation stage, what are the considerations that should weigh with the Court are in quite contrast with the stage when matters are more stable,

as in the case where the charge sheet is already filed or in a case where the trial is already in progress and those considerations that are brought to bear at a later stage should not at any rate be brought into focus on material which is gathered during investigation while it is in progress. The power to grant bail should not be exercised as if the punishment before trial was being imposed and even where prima facie case is established, the approach of the Court in the matter of bail should not be that the accused should be detained by way of punishment.

13. In case of **Indian Handicrafts Emporium -v- Union of India reported in AIR 2003 SC 3240**, it is held as follows:-

"53. We cannot shut out eyes to the statements made in Article 48A of the Constitution of India which enjoins upon the State to protect and improve the environment and to safeguard the forests and wild life of the country. What is destructive of environment, forest and wild life, thus, being contrary to the Directive Principles of the State Policy which is fundamental in the governance of the country must be given its full effect. Similarly, the principles of Chapter IVA must also be given its full effect. Clause (g) of Article 51A requires every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. The amendments have to be carried out

keeping in view the abovementioned provisions.

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111. A trader in terms of a statute is prohibited from carrying on trade. He also cannot remain in control over the animal article. The logical consequence where for would be that he must be deprived of the possession thereof. The possession of the animal article including imported ivory must, therefore, be handed over to the competent authority. In a case of this nature where a statute has been enacted in public interest, restriction in the manner of possession of the property must be held to be implicit. If section 49 (7) is not so construed, it cannot be given effect to."

14. Considering the materials available on record, taking note of the statement of objects and reasons of Wild Life (Protection) Act, 1972, the confessional statements of co-accused Jogesh Lugun and Bipin Kishore Barua, the call detail records of the petitioner and the co-accused Jogesh Lugun and Bipin Kishore Barua indicating frequent calls among them prior to and after the occurrence, the availability of prima facie materials regarding criminal conspiracy between the accused persons for poaching the male elephants and illegal trading of tusks, the statement of accounts of the petitioner attached during investigation showing huge transaction of money, the criminal

antecedents of the petitioner particularly his involvement in similar types of cases, when the further investigation is under progress and stolen tusks are yet to be recovered and trading link is yet to be established, without delving into a detailed examination of the evidence and elaborate documentation of the merits of the case, in the larger interests of the society and State, I am not inclined to release the petitioner on bail at this stage.

Accordingly, all the three bail applications filed by the petitioner stand rejected.

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S.K. Sahoo,J.