

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 5637 of 2016

District : Aurangabad

Gorakh s/o. Kanifnath Pawar,
Age : 32 years,
Occupation : Business,
R/o. Pachod, Taluka : Paithan,
District : Aurangabad. .. Applicant.

versus

The State of Maharashtra,
Through Police Inspector,
Satara Police Station,
Taluka & District : Aurangabad. .. Respondent.

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Mr. P.P. More, Advocate, for the applicant.

*Mr. S.M. Ganachari, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 17TH OCTOBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 173/2016 registered with Satara Police Station, District Aurangabad, for offences punishable under Sections 379, 353, 506, read with Section 34 of the Indian Penal Code and under Section 21(1), (2), (3), (4) & (5) of the Mines and Minerals (Regulation &

Development) Act, by this application, is seeking his release on bail, in the event of his arrest in the said crime.

2. Heard the learned Counsel appearing for the applicant / accused. He argued that the applicant is falsely implicated in the crime in question for extraneous consideration. The learned Counsel further argued that considering the nature of allegations against the present applicant, his custodial interrogation is not at all warranted.

3. The learned Addl. Public Prosecutor opposed the application by submitting that the crime in question is serious and the applicant is *Sand Mafiya* against whom several other offences are already registered. He argued that the complicity of the applicant in the crime in question is well established during the course of investigation.

4. Considered the rival submissions and perused papers of investigation. The FIR of the crime is lodged by Satish Bapusaheb Deshmukh, Circle Officer with the Revenue Department of the State. The informant as well as the Naib Tahsildar were members of the squad for detection of theft of the minor mineral. They saw Tata Eicher truck bearing registration No. MH-20/DC-6252 loaded with the sand standing at Beed Bye-pass Road. Upon questioning the

driver, members of the squad apprehended that the truck was carrying stolen sand. The driver showed transit pass permitting transport of two brass of sand, whereas the truck was found to be containing five brass of sand. The truck was therefore being taken to the Tahsil office by driver of the Revenue Department. At that point of time, the applicant who is stated to be owner of the truck even as per the RTO record, came and started abusing members of the squad. He threatened that he is going to set the truck ablaze. The applicant then emptied the mineral from the truck. In this way, according to the prosecution case, the applicant used criminal force to deter public servants from discharging their duty.

5. Thereafter when the officers of the Revenue Department went to Police Station for lodging the report against the applicant, the applicant flee from the spot by disposing of the minor mineral and taking away the truck. This fact is reflected from the spot Panchanama. Photographs with the papers of investigation goes to show that the applicant was taking out the diesel from the tank of the truck by means of a cloth and smearing the truck with that diesel. In such situation and with such factual backdrop, if the relief as prayed is granted, then the authority of the State will be diminished. There is prima facie case to show that there was theft of the minor mineral apart from obstructing public

servants from discharging their duties. Subsequent conduct of the applicant in fleeing from the spot while disposing of the minor mineral, shows destruction of commission of the offence at the behest of the applicant. That apart, the applicant has serious criminal antecedents apart from conviction in the matter of fleeing from custody of Police. Therefore, no case for anticipatory bail is made out.

6. The Application is accordingly rejected.

(A.M. BADAR)
JUDGE

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