

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICAITON NO. 4886 of 2017.**

NARSIMHA S/O VENKAT KULKARNI

VERSUS.

STATE OF MAHARASHTRA AND ANOTHER

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Advocate for the Applicant : Mr. P.P. Mandlik.

APP for Respondent/State : Mr. K.N. Lokhande.

CORAM : V.L. ACHLIYA, J.

DATE : 21st November, 2017

ORAL ORDER:

1. The applicant apprehending arrest in connection with Crime No. 287/2017 registered at Degloor Police Station, District Nanded, for the offences punishable under sections 420, 465, 468, 471, 379, 336 read with section 34 of the Indian Penal Code, has preferred this application seeking anticipatory bail.

2. Heard learned counsel for the applicant and the learned APP for the respondent/State.

3. In short it is the contention of the learned counsel for the applicant that applicant is owner of the truck seized by police. The Government of Maharashtra had auctioned the sand block at Bolegaon, Tq. Biloli, District Nanded, to one Maddareddy

Mallareddy r/o. Bolegaon for extraction of 4867 brass of sand. Auction purchaser had engaged the truck of applicant for transportation of the sand from the sand block at Bolegaon, on payment of transportation charges. On the day of incident the truck owned by applicant was intercepted while it was carrying sand as per instructions of the auction purchaser. The auction purchaser had handed over the transport permit to the driver of the truck showing payment of royalty. It is contended that the applicant has no role in fabricating or tampering the transport permit. The truck owned by the applicant was driven by the driver in the course of employment. In this background it is contended that none of the offence registered are attracted against the applicant. It is further contended that the applicant has met with serious accident. He is confined to bed. In support of the statement, learned counsel for the applicant placed on record certificate issued by the Apollo hospital and photographs showing the hands and legs of the applicant lying under the plaster. The applicant is advised to take complete bed rest from 9.10.2017 to 10.01.2018. In this background the learned counsel submits that looking to the nature of the offence and allegations

made against the applicant, the custodial interrogation of the applicant is not required. He therefore urged to grant anticipatory bail to applicant.

4. On the other hand learned APP has opposed the application with contention that as per the communication received from the Collector, the transport receipt of payment of royalty produced by the driver is colour xerox of the original. He submits that in the facts and circumstances of the case the application be rejected.

5. On due consideration of the submissions advanced in the light of the overall facts of the case and further taken into consideration that the applicant has under gone serious trauma, I am of the view that the application be allowed. It is an admitted fact that the applicant is owner of the truck. It is no where case of the prosecution that the applicant has extracted the sand from the sand block or river bed and carrying the same for his own use or sale. The applicant was transporting the sand as per the instructions of auction purchaser. The transport permit/receipt in question was handed over by the auction purchaser to the driver of the truck. Prima-

facie there appears to be no role of the applicant in fabrication of record. If really such act of fabrication of record is committed, then the primarily it attracts the responsibility of auction purchaser, who has issued the permit/receipt in question to the driver of the truck.

6. Looking to the overall facts of the case and the applicant has undergone serious trauma on account of accidental injury, I am of the view that the case is made out to entertain the application to grant anticipatory bail to the applicant. Hence following order is passed.

ORDER

1. Application is allowed.

2. In the event of arrest of the applicant in connection with Crime No. 287/2017 registered at Degloor Police Station, District Nanded, for the offences punishable under sections 420, 465, 468, 471, 379, 336 read with section 34 of the Indian Penal Code, the applicant be released on bail on his furnishing bail in the sum of Rs. 25,000/- with one surety in the like amount, on following condition.

- (i) The applicant shall appear before the investigating officer as and when directed by the investigating officer on receipt of written intimation.

7. Criminal application stands disposed of in above terms.

(V.L. ACHLIYA, J.)

mkd/-