

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

Criminal Application No.3842 of 2013

* Ankush s/o Shrirang Gatkai,
Age 34 years,
Occupation: Business,
R/o Nath Nagar, Aurangabad,
Taluka & District Aurangabad. .. **Applicant.**

Versus

- 1) The State of Maharashtra
Through Secretary,
Home Department, Mantralaya,
Mumbai.
- 2) Tahsildar, Tahsil Office,
Paithan, Taluka Paithan,
District Aurangabad. .. **Respondents.**

Shri. V.D. Gunale, Advocate, for applicant.

Shri. R.V. Dasalkar, Additional Public Prosecutor, for
respondent Nos.1 and 2.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Date: 24 JULY 2018

JUDGMENT (Per T.V. Nalawade, J.):

- 1) The proceeding is filed under section 482 of the
Code of Criminal Procedure for the relief of quashing of
F.I.R. No.I-117/2012 registered with Paithan Police

Station, Tahsil Paithan, District Aurangabad for offences punishable under sections 379, 109, 468, 471 read with 34 etc. of Indian Penal Code and few sections of Mines and Minerals (Development and Regulation) Act, 1957. The case is filed against 35 accused and present applicant is accused No.3 in the matter. Both the sides are heard.

2) Papers of investigation show that action was taken by revenue officers on the basis of specific information that the main accused Ashish Sharma was committing theft of sand by illegally excavating the sand. Permission given to Ashish Sharma to collect sand was also cancelled but he had continued activities of collecting the sand. The spot was visited and it was noticed by the revenue officers that 8986 brass of sand was already collected. The main accused was arrested and it is the contention of the prosecution that during interrogation of Ashish Sharma he gave name of the present applicant as his associate and partner in the business. Only on that ground present applicant is made accused.

3) The applicant has produced on record copy of complaint given to District Collector by the present applicant dated 6-4-2012. Action was taken by the revenue officers on 8-5-2012. Present applicant had informed that some persons were excavating the sand from village Pategaon and they used suction pump for that. Specific name of Gayatri Enterprises belonging to Ashish Sharma was taken as the person who was illegally collecting the sand. Response was given by District Mining Officer Aurangabad to the complaint filed by the present applicant dated 6-4-2012 and promise was given to take appropriate action. There is copy of another similar complaint dated 15-5-2012 given against Ashish Sharma.

4) Even if the contention of present applicant that he is whistle blower is ignored, the fact remains that only on the basis of statement given by accused Ashish Sharma while in police custody against present applicant, the applicant is made accused. Submissions made and the record show that there is virtually nothing with police to show that present applicant was partner in the aforesaid concern of Sharma. In view of these circumstances, this

Court holds that, it will be abuse of process of law if the present applicant is made to face the trial for the aforesaid offences. There is virtually no material against him and nothing can be achieved by trying the applicant for the aforesaid offences. In the result, the application is allowed. Relief is granted only in favour of the applicant in terms of prayer clause (B). Rule is made absolute in the aforesaid terms.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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