

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

905 ANTICIPATORY BAIL APPLICATION NO.684 OF 2020

1. TATARAO DUNGA

2. PITAMBAR JENA

VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Chapalgaonkar Shailesh S.

APP for Respondent/State: Mrs. G.L. Deshpande

Advocate to assist the APP: Mr. V. R. Dhorde

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CORAM : MANGESH S. PATIL, J.

DATE : 27.11.2020

PER COURT :

1. This is an application under Section 438 of the Code of Criminal Procedure seeking bail in the event of arrest of the applicants in connection with Crime No.142 of 2020 registered with Kopergaon Police Station for the offences punishable under Sections 379, 427, 430, 441, 447 and 34 of I.P.C.

2. The FIR has been lodged by an individual claiming to be the owner of an agricultural land. He alleges that without his consent, the applicants on behalf of their company have excavated and stolen away sand from his land. It is alleged that it is a matter of criminal trespass, theft and damage to the property.

3. The learned advocate for the applicants submits that the applicants are the employees of a company which is engaged in constructions of Samruddhi Mahamarg. The applicants have been since inception admitting that mistakenly, they have carried out excavation in the land of the informant and have removed the soil. The learned advocate points out that the land adjoining to the land of the informant was acquired and the applicants were to excavate the soil from that land but due to sheer mistake, the land of the informant has also been excavated and the soil has been removed.

4. The learned advocate for the applicants further submits that their company has given a *bona fide* offer to the informant extending three options either to sell the land out rightly to the company or to receive the compensation or even the company would refill the excavated portion. In view of the state of affairs, custodial interrogation of the applicants is not necessary. They are ready to co-operate the Investigating Officer. They may be granted anticipatory bail subject to usual terms and conditions.

5. The learned APP duly assisted by the learned advocate Mr.Dhorde for the informant opposes the application. He submits that *ex facie* the offence is admitted. The land of the informant has been excavated and the soil has been removed without his consent causing

damage to the property which constitutes criminal trespass as well. The company of the applicants is acting in high-handed manner. There is one more witness whose land was also similarly illegally excavated. His statement has been recorded under Section 161 of Cr.P.C. Since it is a company, care should have been taken to resort to measurement before commencing excavation. The high-handed action of the applicants and their company needs to be dealt with sternly and the application be rejected.

6. I have carefully gone through the papers of investigation. It does appear that the applicants have been acting for and on behalf of their company. They have been admitting the fact about illegal excavation of the land of the informant. They have gone to the extent of making a proposal giving three options to him to settle the dispute amicably.

7. There is no manner of doubt that going by the facts and circumstances, the ingredients for constituting the offences of criminal trespass theft and mischief are clearly made out.

8. It is also apparent that like the informant, even one more person has faced the same problem wherein he has stated that even his land was excavated by the applicants and was thereafter refilled albeit it was not properly refilled.

9. Be that as it may, going by the nature of the crime and aforementioned facts and circumstances, custodial interrogation of the applicants does not seem to be imperative.

10. Apart from the above state of affairs, it is also important to note that pursuant to the willingness shown by the applicants, this Court has allowed them to deposit an amount of Rs.50,00,000/- in this Court to show their *bona fides*. The applicants have been enjoying ad-interim protection and there are no allegations about they having breached any term and condition subject to which the interim relief was granted. In fact, the police papers reveal that the Investigating Officer had called upon the applicant no.2 and has also interrogated him and recorded his statement.

11. Considering all the aforementioned facts and circumstances, the application deserves to be allowed subject to suitable conditions.

12. The application is allowed. In the event of arrest of the applicants in connection with Crime No.142 of 2020 registered with Kopargaon Police Station for the offences punishable under Sections 379, 427, 430, 441, 447 and 34 of I.P.C, they be released on bail on their executing personal recognizance for an amount of Rs.25,000/- each and furnishing a solvent surety in the like amount each subject to the following conditions:

(a) They shall attend the concerned Police Station and shall co-operate the Investigating Officer as and when called till filing of the charge-sheet.

(b) They shall not tamper the evidence or influence the witnesses.

(c) They shall not commit a similar crime.

13. The amount deposited in this Court by the applicants be refunded to them.

(MANGESH S. PATIL, J.)