

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.719 OF 2020

1) Rajendra s/o Yashwant Nawle
and another. = APPLICANTS

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.VP Raje, Advocate for Applicant/s
Mr.VM Kagne, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 9th December, 2020.

PER COURT:-

1) Present application has been filed by the present applicants (original accused) for getting anticipatory bail under Section 438 of Code of Criminal Procedure, as they are apprehending their arrest in connection with Cr.No.30 of 2020, registered with Deopur Police Station, Dist. Dhule for the offence punishable under Section 379 r/w.34 of Indian Penal Code.

2) Heard learned Advocate Shri. V.P.Raje for the applicants and learned APP Shri. V.M.Kagne for Respondent-State.

3) It has been vehemently submitted on behalf of the applicants that the First Information Report is lodged by Police officer Vinod Akadmal attached to Deopur Police Station. He along with

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other police were patrolling on 15-03-2020, when they had allegedly got secret information that two tractors with trolleys are transporting sand, which is illegally excavated. They made arrangements for panchas and stopped the tractors. The two drivers of the two tractors disclosed their names as Sitaram Talware and Dashrath Bhil. Then on the inquiry, they disclosed the names of the present applicants as owners of those respective tractors. Sand worth Rs.4,10,000/- was found to have been illegally excavated from the river-bed. Hence he lodged the report.

4) It has been further submitted that the sand allegedly stolen, has been seized at the spot itself. Merely the two accused persons were disclosing the names of present applicants, their custody can not be said to be required. Nothing is required to be investigated now. There is no prima facie case against the applicants. There is inordinate delay in lodging the FIR. Applicants are not directly involved in the alleged crime. The co-accused have been released by Judicial Magistrate First Class. Physical custody of the applicants is not required. They deserve to be released on bail and they are ready to abide by any terms.

5) Per contra, learned APP strongly opposed the application and submitted that the investigation is still pending. The present applicants are the owners of those vehicles seized in the case. Unless they would have asked their

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drivers to do that act, those would not have done it. There is evidence to show that the sand has been stolen at the instance of present applicants. Physical custody is required for interrogation.

6) At the outset, it will have to be noted that such offences, i.e. committing theft of sand, which is owned by Government, from the river-bed, are on high rise. Illegal excavation of sand causes ecological imbalance; makes areas more prone to flooding and it is also harmful to environment. Another fact is that, such illegal excavation is also creating huge loss to the State Exchequer. Almost a parallel economy is created. Many revenue and police officers are targeted by Sand Mafias.

7) Here in this case, two vehicles have been intercepted by police authority. Those trolleys were filled with sand. The drivers could not produce proper authority letter or permission for transportation of the sand. Those persons have given the names of their employers. Now, the present applicants have not come with a case that they are not the owners of those vehicles nor the employers of those persons, who were caught by the police. When the material is available to connect the applicants with the alleged crime, then this appears to be not the proper case, where extraordinary powers to be exercised by granting relief in favour of the applicants. The impact of rejection or allowing such applications is also required to be considered. If in such cases,

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material to connect the accused to the crime is available and the crime has a social as well as environmental repercussions, then these factors will have to be considered. Therefore, the applicants are not entitled to get bail under Section 438 of Code of Criminal Procedure. However, it is made clear that the observations made in this order are based on the facts of the case. The application deserves to be rejected. Accordingly, it is rejected.

(SMT. VIBHA KANKANWADI,J.)

BDV