

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

930 ANTICIPATORY BAIL APPLICATION NO.1122 OF 2020

SHANKAR DNYANDEO MANE

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. P.P. More, Advocate for applicant

Mrs. R.P. Gaur, APP for respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15th DECEMBER, 2020.

ORDER :

1 Applicant has filed present application under Section 438 of the Code of Criminal Procedure, 1973 as he is apprehending his arrest in connection with Crime No.272/2020 registered on 03.08.2020 with Chandanzira Police Station, Jalna, Tq. & Dist. Jalna for the offence punishable under Section 353, 379 read with Section 34 of the Indian Penal Code and Section 3 and 4 of Mines and Minerals Act.

2 Heard learned Advocate Mr. P.P. More for applicant and learned APP Mrs. R.P. Gaur for respondent.

3 It has been vehemently submitted on behalf of the applicant that

the informant is alleging that one truck was found with illegally excavated sand. The Tahsildar made inquiry of the driver, but the driver could not produce any authorization or licence. It is then stated that the present applicant and another person was called. It is also stated that those persons did not allow Tahsildar to take the vehicle to the Police Station and did not comply with the directions given by the Tahsildar. It is alleged that the applicant and another person asked the driver to unload the sand and went away with the vehicle. It has been submitted that the FIR, that has been, lodged is without any substance. There was no motive for the present applicant to commit any offence. In fact, the Trial Court has granted bail to co-accused, and therefore, the present applicant is also entitled to get bail on the ground of parity. There is no question of use of any criminal force or assault to deter the public servant in discharging his official duty, and therefore, the physical custody of the present applicant is not required at all.

4 Per contra, the learned APP strongly opposed the application by saying that nowadays the offences are on high, which are related to illegally excavated sand. When the Government has intensified the movement to curb such offences and illegal excavation of the sand, then even the Revenue Officers as well as Police Officers are assaulted. The Tahsildar, who was the proper authority, was directing the present applicant to do a particular act in

a particular way, he could not have refused. On the contrary, in derogation of the said order he directed his driver to unload the truck and help the driver to flee away with the truck. About three brass of sand was dumped on the road.

5 Definitely the Court agrees to the fact that the offences involving illegal excavation of sand are on rise and the revenue as well as police officers are targeted, whoever try to intercept such illegal activities. The informant in this case is the Sub Divisional Officer. He had intercepted truck bearing No.MH-04-CG-8522, which was having sand. Such interception was made at about 11.30 a.m. on 03.08.2020. The truck driver stopped the vehicle and when inquiry was made, he was adamant, he could not show the licence or permit and on the further inquiry he called present applicant and one Shrishankar Mane to the spot. He refused to take the truck to Police Station. Further, when these two persons, that is the present applicant and another person went there, they instigated the driver to unload the truck at that place and then they helped the driver to flee away. It has been tried to be contended by the present applicant that he has no concern with the incident. However, the learned Advocate for the applicant could not point out that then what is the reason for the revenue officer to include his name in the FIR. We could not get any answer. Further, for clear terms the applicant

is not saying that he is not the owner of the truck in question. He is also not saying that he do not know the truck driver. If this is so, then why the truck driver should call him and then why the applicant should arrive on the spot on the request of the truck driver, is a question. If we cannot get, even at this stage, answer to a question regarding alleged false implication, then definitely at this stage, there is room to believe that there is some connection between the present applicant and the truck. The revenue officer, who is a competent authority under Mines and Minerals Act, had directed him and others to take truck to the Police Station, but instead of doing that on the instigation by this applicant the truck driver unloaded the sand and took away the truck. Definitely that truck is stated to be required to be seized. When such offences are rampant and as aforesaid we unable to get answer about false implication of the applicant with the crime, then definitely, the applicant does not deserve the extraordinary powers of this Court under Section 438 of Cr.P.C. to be exercised in his favour. Application, therefore, stands rejected.

(Smt. Vibha Kankanwadi, J.)