

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

923 ANTICIPATORY BAIL APPLICATION NO.37 OF 2021

Vacchala w/o Digambar Mate,
Age 52 years, Occ. Agri.,
R/o. Plot no. 43/1, F-1, N-4,
CIDCO, Aurangabad.

...Applicant

Versus

The State of Maharashtra,
Through In charge Police Inspector,
MIDC Waluj Police Station, Aurangabad,
Tq. & Dist. Aurangabad.

...Respondent

...
Advocate for Applicant : Mr. Prashant M. Nagargoje
APP for Respondent-State : Mr. S.W. Mundhe

...
CORAM : MANGESH S. PATIL, J.

DATE : 26 FEBRUARY 2021

PER COURT :

Heard both the sides.

2. This is an application under Section 438 of the Code of Criminal Procedure, as the applicant is apprehending her arrest in connection with Crime No.0389/2020 registered with MIDC Waluj Police Station, Dist.Aurangabad for the offences punishable under Section 379 of the Indian Penal Code and Section 21 of the Mines and Minerals Act.

3. It is alleged that the applicant is the owner of 40 Are portion from land Gat No.34.

It was found that 400 brass of Sand Soil was illegally excavated and disposed of in violation of the provisions of the Mines and Minerals Act. Simultaneously, there are allegation that the co accused have also committed similar crime in respect of Gairan land Gat No.110 of the same village.

4. The learned Advocate for the applicant would submit that the applicant is a woman. She is the owner of the land. She does not reside near the land and even if some sand is excavated and illegally transported, she has no connection. She has been granted ad-interim anticipatory bail. There are no allegations about she having committed any breach of terms and conditions. She is ready to co-operate with the Investigating Officer. There are no criminal antecedents and the ad-interim relief be confirmed.

5. The learned APP opposes the application. He points out that in view of the provisions of Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957, the Investigating Officer is entitled to seize the vehicle by which the Sand is illegally transported as also he is entitled to seize the mineral as well. The applicant being the right person to help him in tracing out the vehicle and the mineral, the application be rejected.

. I have carefully gone through the papers.

6. By virtue of the provisions of Section 21 read with Section 4 of the Mines and Minerals (Development and Regulation) Act, 1957 the Investigating Officer has a power to seize the mineral as well the vehicle in which the mineral is transported. A huge quantity of mineral of 400 brass is stated to have been illegally excavated from the land Gat No.34.

7. The 7/12 extract of the land Gat No.34, *prima facie* shows that it is divided into several pieces of land owned by as many as 14 persons, whose individual portions range from 1 H 31 Are to as less as 30 Are. From the panchanama, it is not clear as to how the panchas would come to the conclusion that the Sand was excavated from the 40 Are portion out of this 6 H 59 Are portion of the entire land Gat No.34.

8. Be that is may the applicant is a woman. There are no criminal antecedents. The sand is allegedly excavated by her from her own property. She has already been granted ad-interim anticipatory bail. There are no allegations about she having committed breach of the terms and conditions. The Investigating Officer does not state anything about having called her pursuant to the terms subject to which she was granted ad-interim bail.

9. Considering all the aforementioned state of affairs, the application deserves to be allowed.

10. The Application is allowed and the ad-interim relief granted by this Court by the order dated 18.01.2021 stands confirmed with the same terms and conditions.

(MANGESH S. PATIL, J.)

sarowar