

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

ANTICIPATORY BAIL APPLICATION NO. 101 OF 2021

Dattatray Mahalu Gaikwad	... Applicant
Versus	
The State of Maharashtra	... Respondent

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Mr. K. N. Shermale, Advocate for the applicant
Mr. V. M. Kagne, APP for the respondent-State

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CORAM : R. G. AVACHAT, J.

DATED : 19th MARCH, 2021

PER COURT :-

1. This is an application for bail under Section 438 of the Code of Criminal Procedure. The applicant claims to have an apprehension of being arrested in connection with Crime No.1108 of 2020, registered at Karjat Police Station, District Ahmednagar, for the offences punishable under Sections 439, 379 read with 34 of the Indian Penal Code and under Sections 3 and 15 of the Environment Protection Act, 1986.

2. Heard. Perused the First Information Report (FIR).

The FIR has been lodged by a Police Constable working with Karjat Police Station, District Ahmednagar. It has been averred

in the FIR that on 30.11.2020, an information had been received that the sand from the riverbed of Bhima river at Siddhatek, was being unauthorisedly excavated. The informant along with some other police staff, therefore, went to river Bhima at Siddhatek. It was noticed that one machine boat was employed for excavation of sand. Having seen the police party, the persons on the boat, sped up the boat in opposite direction. The police party, therefore, chase the boat and intercepted it to find three persons therein. They were (1) Mazharul Hanif Shaikh, (2) Humayun Mujamnil Shaikh and (3) Alim Nayumuddin Shaikh. On inquiry with those persons, it was revealed that the boat engaged in unauthorized excavation of the sand, belonged to the applicant. A suction pump used in excavating the sand, came to be seized. The machine boat was sunk on the spot.

3. Learned Advocate for the applicant would submit that the applicant was not at the site. The boat allegedly involved in excavation of the sand did not belong to the applicant. It is only on the basis of the statement of a person who was engaged in unauthorized excavation of the sand, the FIR has been lodged against the present applicant. He, therefore, urged for grant of application.

4. The learned APP, would on the other hand, submit that the applicant had criminal antecedents. He has been involved in similar offences committed in the past. There is statement of an independent witness, namely Dadasaheb Bhosale, intimating the applicant's involvement in the offence. He, therefore, urged for rejection of the application.

5. It is true that the criminal antecedents would be relevant while considering the application for anticipatory bail. One has, however, to first look into the material relied on, which pertains to the offence in question. In the case in hand, the applicant had, admittedly, not been found at the site. It has been alleged in the FIR that the police party intercepted the machine boat engaged in unauthorized excavation of the sand. The person who had manned the said boat, informed the police that the boat belonged to the applicant herein. The said information is in the nature of a statement of the co-accused. Learned APP relied on the statement of Dadasaheb Bhosale. It would be clear that whatever he had stated in his statement is based on a statement given by the co-accused. When the raiding party could have seized the machine boat engaged in unauthorized excavation of the sand, it preferred to sunk it on the

spot. As such, it caused disappearance of the machinery employed. Except the statement of the co-accused, there is nothing to indicate that seized suction pump and the sunk machine boat belonged to the applicant herein. In the FIR, the cost of the suction pump is shown to be Rs.2,00,000/- (Rupees Two Lakh). The applicant disowns to have owned the suction pump. As such, it was the hearsay of the co-accused. There is nothing to indicate that it was the applicant to have involved in the alleged offence.

6. So far as regards criminal antecedents are concerned, it is to be stated that most of them date back to the year 2012, 2013 and 2017. Since there being only a statement of the co-accused and nothing more, I am inclined to grant the application. Hence, following order:

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in connection with Crime No.1108 of 2020, registered at Karjat Police Station, District Ahmednagar, for the offences punishable under Sections 439, 379 read with 34 of the Indian Penal Code and under Sections 3 and 15 of the Environment Protection Act, 1986, the applicant be released on

executing P. R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand Only) with surety in the like amount.

(iii) The applicant shall appear before the investigating officer as and when required.

(iv) The applicant shall not tamper with the prosecution evidence.

[R. G. AVACHAT, J.]

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