

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

7 ANTICIPATORY BAIL APPLICATION NO.709 OF 2021

1. Bharat s/o Balbhim Amnar,
Age; 21 years, Occ; Agri,
2. Sharad s/o Mahadev Shendge,
Age; 31 years, Occ; Agri,

Both R/o; Watluj, Tq Daund,
District Pune.

3. Dattatraya s/o Vikram Khatal,
Age; 30 years, Occ; Agri,
4. Ankush s/o Bapu Thombre,
Age; 32 years, Occ; Agri,

Applicants No. 3 and 4,
R/o; Ganeshwadi, Tq. Karjat,
District; Ahmednagar.

...Applicants.

VERSUS

State of Maharashtra,
Through the Police Inspector,
Karjat Police Station,
Tq. Karjat, District Ahmednagar.

...Respondent.

...
Advocate for Applicants : Mr. Karpe Rahul R.
APP for Respondent-State : Mrs. D.S. Jape
...

CORAM : SANDEEP K. SHINDE , J.

DATE : 19th July, 2021.

P. C. :

1. Heard learned counsel for applicants and learned APP for

State.

2. Apprehending arrest in connection with Cr. No. 322 of 2021 dated 25.5.2021, registered with Karjat Police Station, District Ahmednagar, for the offence punishable under Section 379 read with Section 34 of the Indian Penal Code ('IPC' for short) and under Section 3 and 15 of the Protection of Environment Act, applicants are seeking pre arrest bail.

3. At the outset, Mr. Karpe, learned counsel for the applicants does not press this application, qua applicant No. 4 Ankush s/o Bapu Thombre, against whom four offences of the similar in nature were registered in past. As such, application of applicant No. 4 is rejected.

PROSECUTION CASE :

4. Upon receiving secret information, that quite few persons were illegally extracting sand from Bhima river with mechanical devices, police apprehended two of them and others fled the spot. Whereafter, two persons disclosed the names of applicants. Indisputably, the devices i.e. fiber boat and suction boat allegedly used for extracting sand were owned by applicant No. 1 Bharat s/o Balbhim Amnar. In fact situation, instead attaching the fiber boat

and suction boat, a team of police destroyed these devices and thereby caused disappearance of evidence. This action on the part of the police is foreign to the Code of Criminal Procedure. Rather it may attract penal provisions of Section 201 of the I.P.C. Police ought to have preserved the evidence but they highhandedly caused its disappearance. This act of police cannot be overlooked and therefore, the Superintendent of Police, Ahmednagar, shall inquire into and submit report to this Court.

5. It may be stated that the members of raiding party ought to have registered offence under Section 48 of the Maharashtra Land Revenue Code, since the allegations in the FIR imply that the accused were indulging into excavation of sand without permit. For whatever reasons the officers omitted to register the offence under the relevant provisions of Maharashtra Land Revenue Code.

6. Be that as it may, the investigation record produced before me, does not indicate that the accused had excavated the sand in as much, as sand was not found either on the bank of river or in possession of two persons, who were apprehended on spot. Today, except the statements of the two co-accused, there is no material on record against the applicants No. 1, 2 and 3, to connect them to the crime in question. When inquired, learned APP submitted that there

are no criminal antecedents against applicants No. 1, 2 and 3, to hold their involvement in the offences of similar in nature. In consideration of these facts, in my view, the custodial interrogation of the applicants No. 1, 2 and 3, may not advance the prosecution case. Therefore, pre-arrest bail is granted to applicants No. 1, 2 and 3 and denied to applicant No. 4.

7. (i). In the event of arrest of applicants No. 1, 2 and 3 in connection with offence under Section 379 read with Section 34 of the Indian Penal Code and under Section 3 and 15 of the Protection of Environment Act, they shall be released on bail on executing P.R. bond each in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand) each with one or two sureties in the like amount.

(ii). The applicants No. 1, 2 and 3 shall report to the Investigating Officer, on 23rd, 26th and 30th July 2021 and thereafter once in a week and thereafter on each Monday in between 11:00 a.m. to 1:00 p.m. till the charge-sheet is filed.

iii) Registry is directed to forward a copy of this order to the Superintendent of Police, Ahmednagar. He shall verify the facts of the case and hold an inquiry against the officers who have caused disappearance of evidence and take appropriate action against them as he thinks fit and proper. It shall be done preferably within a month from today, in compliance of this order the Superintendent of

Police shall forward the compliance report to the Registry of this Court in a sealed envelope, whereafter the registry shall place the report in the proceedings of this Court.

8. Application is allowed and disposed of in aforesaid terms.

(SANDEEP K. SHINDE)
JUDGE

mahajansb/