

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

ANTICIPATORY BAIL APPLICATION NO. 885 OF 2021

1. Vilas S/o Tulshiram Garad,
Age : 45 years, Occu. Agri.
2. Tejas S/o Vilas Garad,
Age : 20 years, Occu. Agril.

Both R/o. Shendur Sheni, Tq. Arni,
Dist. Yavatmal.

...Applicants

Versus

The State of Maharashtra

...Respondents

.....
Mr. B. N. Gadegaonkar, Advocate for the applicants
Mr. A. V. Deshmukh, APP for respondent / State
.....

CORAM : V. G. BISHT, J.
DATED : 27th August, 2021

PER COURT : -

1. This is an application under Section 438 of the Code of Criminal Procedure, 1973 preferred by the applicants seeking grant of pre-arrest bail in connection with Crime No. 0059 of 2021, registered with Sindkhed Police Station, District Nanded, for the offences punishable under Sections 379, 353, 332, 504, 506 r/w 34 of the Indian Penal Code.

2. On 27.04.2021, when the informant and others had been to inspect the river bed of Mouje Sayphal at about 08:00 am, they found a tractor bearing registration No. MH-29/BP-4215 being used in the illegal excavation of sand without any permit. When the tractor driver was asked to take the tractor to Tahsil Office at Mahur, he fled away with tractor towards Vidarbha region. It is alleged that, the owners of the tractor namely, Vilas Tulshiram Garad and Sarang Vilas Garad armed with spades rushed on the person of the informant and others and shoved them and thereby created obstruction in discharge of their official duties.

3. Mr. B. N. Gadegaonkar, learned Counsel for the applicants, submits that having regard to the nature of allegations, the custodial interrogation of the applicants is not necessary as nothing is to be recovered or discovered from them. There is also delay in lodging the FIR. For all these reasons, the present application deserves to be allowed.

4. Mr. Deshmukh, learned APP, on the other hand, opposed the submissions by contending that the present applicants and his men were involved in illegal excavation of sand and when confronted, they

used criminal force and thus prevented the informant and others from discharging their public duties. Not only that, they also committed theft in respect of the sand. Since the investigation is in progress, their custodial interrogation is necessary in order to ascertain the whereabouts of the tractor and the sand taken away by them illegally.

5. A careful reading of the FIR would show that there are vague allegations of excavating sand from the river bed of Mouje Sayphal and the applicants allegedly came running on the person of the informant and others and shoved them. It is nowhere specified in the FIR as to what quantity of the sand was excavated allegedly by the men of the applicants.

6. The above allegations would make it clear that the custodial interrogation of the applicants is not necessary. In the light of the facts and circumstances of the case, the applicants can be asked to cooperate with the Investigating Officer during the course of the investigation by imposing certain conditions.

7. In view of the above, I am inclined to allow the application and pass the following order. Hence, the following order.

ORDER

- i. The application is allowed.
- ii. In the event of arrest of the applicants herein in connection with Crime No. 0059 of 2021, registered with Sindkhed Police Station, District Nanded, for the offences punishable under Sections 379, 353, 332, 504, 506 r/w 34 of the Indian Penal Code, the applicants are directed to be enlarged on bail on their furnishing P.R. Bond of Rs.20,000/- [Rs. Twenty thousand only] each, with one or two solvent sureties in the like amount.
- iii. The applicants shall attend the concerned police station as and when called and shall cooperate with the police in the investigation.
- iv. The applicants shall not tamper with the prosecution evidence in any manner.

[V. G. BISHT]
JUDGE