

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

931 ANTICIPATORY BAIL APPLICATION NO.922 OF 2021

Gajanan Gyanogi Dombre ...Applicant

Versus

The State of Maharashtra ... Respondent

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Advocate for the Applicant : Mr. N. R. Pawade

APP for the Respondent – State : Mr. N. T. Bhagat

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CORAM : V. G. BISHT, J.

DATE : 16th SEPTEMBER, 2021

PER COURT :-

1. This is an application under section 438 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No. 200/2021, registered with Selu Police Station, District Parbhani for the offences punishable under Section 379, 34 of the Indian Penal Code, 1860 and under Sections 48(7), 48(8) of Mines and Mineral Act.

2. It is the case of prosecution that on 24.06.2021 the informant received the information that illegal excavation of sand at riverbed of Dudhana is going on and, therefore, the

informant alongwith panch witnesses and other staff members raided the place. The informant found that with the help of suction pump excavation of sand was going on and being filled up in a tractor. However, both the drivers fled away. There was a Poklane machine of Hundai Company found on the spot which was being used for the purpose of excavation and belongs to Gajanan Dombé i.e. applicant. It was found that there was total 470 brass of sand worth Rs. 26,97,800/-. The informant accordingly lodged the report.

3. Mr. N. R. Pawade, learned counsel for the applicant, submits that even if the allegations in the First Information Report are taken as it is on its face value, still the offences mentioned in the F.I.R. are not attracted against the applicant. Main accused, namely, Arjun Bandu Gunge is already released on regular bail by the trial Court. According to learned counsel for the applicant, the said Poklane machine belongs to applicant which was given on rent to the main accused and thus the present applicant was no way concerned with the alleged illegal excavation of sand. Learned counsel also invited my attention to the remand report (Exhibit "B") dated 02.07.2021 to substantiate his submissions.

4. Mr. N. T. Bhagat, learned APP for the Respondent – State, on the other hand, opposed the submissions by contending that the present applicant in collusion with main accused was carrying out the work of illegal excavation of sand. Having regard to the nature of offences, the present application does not merit consideration, urged learned APP.

5. It is not disputed that the main accused, namely, Arjun Bandu Gunge is released on regular bail. I have also read the remand report (Exhibit “B”), wherein it is clearly stated by said Arjun Bandu Gunge that the Poklane machine was taken by him from the applicant on rental basis by virtue of an agreement. The prosecution has not brought anything on record to *prima-facie* establish that the present applicant was actually involved in the illegal excavation of sand from the riverbed of Dudhana.

6. In view of above, in my considered opinion, there is no necessity of custodial interrogation *inasmuch* as everything has been seized on the spot itself. For this simple reason, I am inclined to allow the application. Hence, the following order :-

ORDER

(i) Application is allowed.

- (ii) In the event of arrest of the applicant Gajanan Gyanogi Dombe herein in connection with Crime No. 200/2021, registered with Selu Police Station, District Parbhani for the offences punishable under Section 379, 34 of the Indian Penal Code, 1860 and under Sections 48(7), 48(8) of Mines and Mineral Act, the applicant is directed to be enlarged on bail on his furnishing P.R. Bond of Rs.20,000/- (Rupees Twenty Thousand only), with one or two sureties in the like amount.
- (iii) The applicant shall not tamper with the prosecution evidence in any manner.
- (iv) Application is accordingly disposed off.

(V. G. BISHT)
JUDGE

shp/-