

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

ANTICIPATORY BAIL APPLICATION NO. 978 OF 2021

Santosh s/o Ankush Natkar,
Age : 41 years, Occu. Agri.,
R/o. Rakshasbhuvan, Tq. Gevrai,
Dist. Beed.

...Applicant

Versus

The State of Maharashtra

...Respondent

.....
Mr. Shrikant G. Kawade, Advocate for the applicant
Mr. N. T. Bhagat, APP for respondent / State
.....

**CORAM : V. G. BISHT, J.
DATED : 07th 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. 248 of 2021, registered with Gondi Police Station, District Jalna, for the offences punishable under Sections 379 r/w 34 of the Indian Penal Code and 48(7) and 48(8) of the Maharashtra Land Revenue Code, 1966.

2. It is the case of prosecution that on 05.07.2021, the informant, who works as Talathi at Mauje Sasthapimpalgaon, along

with others had been to Godavari river bed to inspect the spot from where the sand had been stolen. When he and others reached there, they saw 14 unregistered tractors and some people loading sand therein illegally. Those persons immediately fled away along with their tractors. The informant and the staff members then inspected the spot viz. Gut Nos. 444 and 446 and found that there was illegal excavation of 54 brass sand. It is, however, alleged that those persons who had fled away had unloaded the sand at three places, which came to be seized under panchanama. Accordingly, complaint came to be lodged.

3. Mr. Shrikant G. Kawade, learned Counsel for the applicant, submits that there is no direct allegation against the present applicant and he has been falsely implicated by the police authorities. There is no question of applicability of Section 379 of the Indian Penal Code inasmuch as the alleged sand was seized on the spot. In such circumstances and the fact that there is no necessity of custodial interrogation, the application deserves to be allowed, argued learned Counsel.

4. Mr. N. T. Bhagat, learned APP, on the other hand, opposed the submissions by contending that the applicant and others

were illegally excavating the river bed and they had allegedly removed 54 brass of sand therefrom, which later on came to be seized. The investigation is in progress and in such circumstances, there being no merit in the application the same is liable to be rejected.

5. I have carefully gone through the contents of FIR. There is no dispute to the fact that the alleged stolen sand has already been recovered from the spot. In such circumstances, there is no *prima facie* question of applicability of Section 379 of the Indian Penal Code. Moreover, nothing is to be recovered or seized from the custody of the applicant. This being so, I am inclined to allow the application.

6. In view of above, I pass the following order.

ORDER

- i. In the event of arrest of the applicant, namely, Santosh Ankush Natkar in connection with Crime No. 248 of 2021, registered with Gondvi Police Station, District Jalna, for the offences punishable under Sections 379 r/w 34 of the Indian Penal Code and 48(7) and 48(8) of the Maharashtra Land Revenue Code, 1966, the applicant is directed to be enlarged on bail on his furnishing P.R. Bond of Rs.25,000/- [Rs. Twenty Five thousand], with one or two solvent sureties in the like amount.

- ii. The applicant shall attend the concerned police station as and when called and shall cooperate with the police in the investigation.
- iii. The applicant shall not tamper with the prosecution evidence in any manner.

7. The Anticipatory Bail Application stands disposed of in aforesaid terms.

[V. G. BISHT]
JUDGE