

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2754 OF 2019

1. Balraj Digambar Jadhav
2. Mohan Digambar Jadhav Applicants

Versus
The State of Maharashtra Respondent

Mr. Jayant J. Bardeskar, for the applicant.
Smt. G.P. Mulekar, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 18th SEPTEMBER, 2021**

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No. 147 of 2019 registered at Laxmipuri Police Station, Kolhapur, under section 379 read with Section 34 of the Indian Penal Code.

2. Heard Mr. Jayant Bardeskar, learned counsel for the applicants and Smt.G.P. Mulekar, learned APP for the State.

3. The FIR is lodged by Pralhad Bahusaheb Yadav, who was Talathi in Karveer Circle. On 06/11/2019, his superior officer Mr. Anil Katkar was informed by Mr. Sachin Ithape that there was excavation of earth in City Survey No. 2357/B, Kasba, Kolhapur and the earth which was excavated was transported illegally. The informant and his other officers went to the spot. According to the first informant, they conducted a panchnama. They sought the information and they were told that the excavation was carried out one month prior to their visit. The land was in the name of both the applicants. The allegations are that they had excavated the spot admeasuring 110 x 20 x 3.50 mtrs.. It was alleged that earth and murum worth Rs. 1,50,000/- were illegally transported and hence stolen. On this basis, the FIR is lodged.

4. Shri Bardeskar, learned Counsel for the applicants submitted that the applicants wanted to carry out construction of ground plus 11 floors on that land. The applicants had applied for permission from the Kolhapur Municipal Corporation. The application for that purpose was made on 08/05/2019. Shri

Bardeskar submitted that the application was not replied within a period of 60 days and therefore, under MRTP Act, it was considered to be deemed permission. The applicants had merely levelled the ground and there was no excavation of sand or murum and therefore, no offence was committed by the applicants.

5. Learned APP opposed this application. She submitted that the applicants have not given details as to when and where the soil and murum were transported and sold. She submitted that the applicants' act comes under the provision of Sections 48(1) and 48(7) of the Maharashtra Land Revenue Code, 1966 and, therefore, case is made out against the applicants. Anticipatory bail should not be granted to the applicants.

6. I have considered these submissions. The applicants were protected by an interim order dated 17/12/2019 passed by this Court (Coram: Prakash D. Naik, J.). Since then they were under protection for about two years. There is absolutely no progress in the investigation. It is difficult to believe that the

police could not find any witness in support of their case and they had to depend upon only on the confession statement made by the applicants; if and when they were arrested. In any case, the applicants have applied for permission for construction on the land. There is nothing to show that excavation was actually carried out.

7. Mr. Bardeskar, learned Counsel for the applicants submitted that a Division Bench of this Court in Writ Petition (St.) No. 93842 of 2020 has already stayed recovery of penalty in respect of the same piece of land and about the same allegations. This is also an important aspect which I have taken into consideration.

8. There is no sufficient material mentioned against the applicants in the FIR. The applicants were under protection for about two years. The allegations against the applicants are about the acts of the applicants purportedly carried out in May 2019. Therefore, after all these years, I am not inclined to allow the

investigating agency to arrest the applicants' on these vague allegations. The applicants' custodial interrogation is not necessary.

9. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R. No.147 of 2019 registered with Laxmipuri Police Station, Kolhapur, the Applicants are directed to be released on bail on their furnishing PR bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.

- (iii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)