

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

ANTICIPATORY BAIL APPLICATION NO. 1859 OF 2019

Ravindra Sudam Adhikari ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. S. V. Marwadi i/by Mr. N. M. Nadar, Advocate for the Applicant.

Mr. S. R. Agarkar, APP for the Respondent – State.

Mr. P. S. Raut (A.S.I.) Satpati Sagari Police Station, Dist. Palghar
Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 25th AUGUST, 2021.

PER COURT:

1. The applicant is apprehending arrest in C.R. No. 48 of 2019 registered with Satpati Police Station, Dist. Palghar for offences under Sections 379, 224, 413 r/w Section 34 of Indian Penal Code (for short “IPC”) and Section 48(7) of Maharashtra Land Revenue Code, 1966.

2. The First Information Report (for short ‘FIR’) was registered on 26th July, 2019. It is alleged that information was received by the Satpati Sagari Police Station that some persons are indulging in illegal transport of sand. On receipt of the information,

Police party proceeded for action. On 26th July, 2019 it was noticed that truck was driven on Bhoisar Road and it was suspected to be carrying sand. The truck and driver were intercepted. Inquiry was made with the driver. He did not give satisfactory explanation. On scrutiny it was found that the truck was carrying sand. The truck was owned by the applicant. The driver of the vehicle confessed that the sand was being transported under instructions of the applicant.

3. The applicant had preferred an application for anticipatory bail before the Court of Sessions. The said application was rejected vide order dated 20th August, 2019.

4. Learned Advocate for the applicant submitted that the entire case of the prosecution is false. The custodial interrogation of the applicant is not necessary. The truck was intercepted on suspicion. The only fault of the driver is not taking the receipt of royalty paid to the local excavator. The applicant is not involved in committing theft of sand. The truck had passed through the royalty gate under the impression that the royalty receipt will be issued. The truck and the sand was seized. Nothing is to be recovered from the applicant. The applicant has annexed the copies of the receipts of royalty paid in the past. The Collector of Palghar had granted

permission for excavation and transportation of sand from 1st May, 2019. The applicant was granted interim protection by this Court and he has co-operated with the investigation. The learned Sessions Judge has erroneously rejected the application for anticipatory bail and one of the ground is that the applicant is habitual offender. In the past, one case was registered against the applicant which has resulted in acquittal. Reliance is placed on the Judgment of acquittal which has been annexed to this application. The driver of the vehicle was arrested and charge-sheet has been filed against him.

5. The Police Sub Inspector attached to Satpati Police Station has filed an affidavit opposing grant of anticipatory bail. Learned APP submitted that the applicant is involved in the offence. The truck carrying sand belongs the applicant. The co-accused, who was apprehended on the spot had confessed that the sand was being transported under the instructions of the applicant. The applicant had not produced the royalty receipts.

6. In the affidavit filed by the investigating officer it is stated that the applicant had relied upon the royalty receipts which has been annexed to this application. He was directed to produce the receipts and the same was produced by him and it has been

seized vide panchanama dated 29th August, 2019. The said receipts shows that the applicant was granted royalty permission for a period of 7th May, 2019, 24th June, 2019 and 12th August, 2019. However, he had not produced any receipt/royalty permission for the month of July – 2020. The office of the Deputy Collector, Palghar has confirmed that the said office had not issued any permit or license of the applicant in July - 2019 and there was no such application by the applicant. The applicant is habitual offender and similar offence vide C.R. No. 84 of 2013 was registered at Manor Police Station, Dist. Palghar under Section 379 r/w Section 34 of IPC and Section 48(7) of the Maharashtra Land Revenue Code, 1966. The applicant is unauthorizedly transporting the sand. The custodial interrogation of the applicant is necessary.

7. The applicant has filed additional affidavit as counter to the affidavit-in-reply filed by the prosecution and contended that the applicant has been acquitted in C.R. No. 84 of 2003. The respondent have contended that the applicant is habitual offender and that he is involved in similar offence. The trial Court in the said case has given finding that no witness had seen the accused excavating the sand nor any inquiry was made in respect to the owner of articles. Another receipt in respect to another truck was

for the month of July and the said receipt was issued in favour of one Sunil Shantaram Raut from whom the applicant used to collect sand. The applicant is not habitual offender. The applicant was dealing with persons having royalty receipts and there was no royalty receipt issued in his name and it is not his case that he had royalty license with him. The receipts produced would show that Collector had been issuing such royalty receipts.

8. On perusal of the documents it is apparent that the case of the prosecution is that the truck owned by the applicant was intercepted and it was carrying sand. The driver of the truck or the applicant had allegedly not produced any royalty receipts. The applicant has relied upon certain royalty receipts which indicate that he was collecting sand from others to whom the royalty receipts were issued and transporting it from his truck. On perusal of the documents and affidavit-in-reply filed by the prosecution, there is no cogent evidence to indicate that the applicant is involved in theft of sand or any excavating the said illegal sand. The case proceeds on the basis that transporting the said sand without valid royalty receipts. On perusal of the receipts annexed to the application it is apparent that during the concerned period royalty receipts were indeed issued by the concerned department.

The driver of the truck was arrested. On completing investigation, charge-sheet has been filed against him. The learned Sessions Judge while rejecting the application has observed that the applicant was habitual offender and he is indulging in similar offences. The applicant has relied upon the Judgment of the trial Court delivered in C.R. No. 84 of 2013. The trial has resulted in acquittal of the applicant. The applicant was granted interim protection by this Court vide order dated 26th August, 2019 and he was directed to report Investigating Officer on stipulated dates. The affidavit-in-reply filed by the prosecution mentions that pursuant to the directions, the applicant had submitted the receipts which has been seized vide panchanama dated 29th August, 2019. The receipts produced by him shows that he was granted royalty permissions for a period of 7th May, 2019, 24th June, 2019 and 12th August, 2019. The objection of the Investigating agency is that there was no receipt for month of July – 2019. The applicant has cooperated with the investigation. The fact that the charge-sheet is filed against co-accused, who was arrested on the spot indicate that the investigation is completed. The truck along with sand has been seized during investigation. Considering the aforesaid factual aspects, the applicant need not be subjected to custodial interrogation.

9. Hence, I pass the following order:

ORDER

- (i) Anticipatory Bail Application No. 1859 of 2019 is allowed;
- (ii) Interim order dated 26th August, 2019 is confirmed.
- (iii) In the event of arrest of the applicant in connection with C.R. No. C.R. No. 48 of 2019 registered with Satpati Police Station, Dist. Palghar on executing P.R. Bond in the sum of Rs.20,000/- with one or two local sureties in the like amount;
- (iv) The applicant shall report the investigating officer as and when called for till filing of charge-sheet.
- (v) The applicant shall not tamper with the evidence.
- (vi) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)