

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

ANTICIPATORY BAIL APPLICATION NO.337 OF 2022

Sagar s/o. Tukaram Kokane,
Age:22 years, Occ. Agri.,
r/o. Dhandarfal Kh, Tq. Sangamner,
Dist. Ahmednagar

..Applicant

Vs.

The State of Maharashtra

..Respondent

Mr.K.N.Shermale, Advocate for applicant
Mr.S.P.Sonpavale, APP for respondent

**CORAM : R.G. AVACHAT, J.
DATE : APRIL 11, 2022**

ORDER :-

This is an application under Section 438 of the Code of Criminal Procedure. The applicant claims to have apprehension of arrest in connection with Crime No.0035 of 2022 registered with Sangamner Taluka Police Station, Dist. Ahmednagar, for the offence punishable under Section 379 read with Section 34 of Indian Penal Code; Section 15 of the Environment Protection Act, 1986; Sections 4 and 21 of the Mines and Minerals Act, 1952; Section 3 of Destruction of Public Property Act, 1984; and Sections 3, 3/181, 158, 177 of Motor Vehicles Act.

2. Heard learned counsel for the parties. Perused the First Information Report (FIR) and related papers.

3. The FIR dated 27.01.2022 has been lodged by an official working with the office of Sub Divisional Police Officer, Sangamner. It has been averred in the FIR that pursuant to a tip off, the S.D.P.O. accompanied by the informant, some other police staff and two panchas went to village Dhandharfal Khurd by 05:20 a.m. on 27.01.2022. The tip off was that there was excavation of sand from the bed of Pravara river. From village Dhandharfal, the police team went towards village Nimaj in a private vehicle. It was about 06:25 a.m. The members of the raiding team kept themselves hidden by the side of the road. They noticed that a tractor attached with trolley filled with sand, was approaching from the river side. They, therefore, intercepted the tractor. The tractor driver gave his name as Shrikant Kasar (co-accused). He also told the team members that he was doing excavation of sand in partnership with the applicant. He admitted to have no permission or licence for excavation of sand. The raiding team, therefore, seized the tractor and the trolley. It is alleged that the trolley contained sand of

Rs.4,000/-. In the last paragraph of the FIR, it has been mentioned that the applicant ran away from the place.

4. Learned counsel for the applicant would submit that the crime has been registered based on the statement of the co-accused. Same is inadmissible. The allegedly stolen sand has already been seized. The applicant was not at the site. It is just difficult to imagine that he will took to his heels when the police party headed by the Dy. Superintendent of Police effected raid. According to learned counsel, no custodial interrogation of the applicant is warranted. He, therefore, urged for allowing the application.

5. Learned APP would, on the other hand, submit that a number of similar crimes have been registered against the applicant. Instances of unauthorised excavation of sand are on rise. It is loss of the State's revenue. He, therefore, urged for rejection of the application.

6. Although the applicant has criminal antecedents, merits of the crime in question have first to be *prima facie* ascertained. It is a case of unauthorised excavation of sand. The sand was worth

Rs.4,000/- . The tractor, trolley and the sand have all been seized. Identity of the applicant was disclosed by the tractor driver (co-accused). In the entire body of the FIR, there is no mention that the applicant was on the tractor along with the tractor driver (co-accused). It is only in the last paragraph of the FIR, it has been mentioned that the applicant took to his heels. It is just difficult to imagine that the raiding team comprising of a number of police officials along with two panchas was unable to over-power the applicant herein. Be that as it may.

7. Since the name of the applicant has been figured in the FIR based on the statement of the co-accused and the alleged stolen sand worth Rs.4,000/- has already been seized, custodial interrogation of the applicant is not necessary. This Court is, therefore, inclined to allow the application.

8. Hence, the following order:-

(i) The application is allowed

(ii) In the event of arrest of the applicant in connection with Crime No.0035 of 2022 registered with Sangamner Taluka Police Station, Dist. Ahmednagar, for the offence punishable under Section

379 read with Section 34 of Indian Penal Code; Section 15 of the Environment Protection Act, 1986; Sections 4 and 21 of the Mines and Minerals Act, 1952; Section 3 of Destruction of Public Property Act, 1984; and Sections 3, 3/181, 158, 177 of Motor Vehicles Act, the applicant be released on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(iii) The applicant shall not tamper with the prosecution evidence in any manner

(iv) He shall report to the concerned police station as and when called for.

[R.G. AVACHAT, J.]

KBP