

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

ANTICIPATORY BAIL APPLICATION NO.415 OF 2022

Pandurang S/o Bhimrao Chormale

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Rajendra G. Hange Advocate for Applicant.
Mr.B.V. Virdhe, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 19th APRIL, 2022

ORDER :

1. Applicant is apprehending his arrest in connection with Crime No.72 of 2022 registered with Georai Police Station, Taluka-Georai, District-Beed for the offence punishable under Sections 304, 379 read with Section 34 of the Indian Penal Code.
2. Heard learned Advocate for the applicant and learned APP for the respondent – State.

3. In order to cut-short, it can be said that the learned Advocate for the applicant submitted that nothing was intentional in this case, but because of the fact that earlier the applicant was the owner of JCB Machine, it has been alleged that applicant had got the sand excavated from a particular spot and then due to the heavy rains that ditch got filled with water in which four children got drowned. There could not have been any intention that it should cause death of a person. In fact the applicant had sold his JCB Machine bearing No.MH-23-BC-0480 on 17th November 2021 to one Mahadev Dadarao Fartade by way of sale agreement. Brother of the applicant was opposing the business of illegal excavation of the sand. He along with the villagers had filed complaint with Collector, Beed for stopping such illegal excavation. That act on the part of his brother raised many enemies and therefore applicant has been falsely implicated. Even if the contents of the First Information Report (for short "FIR") are taken as it is, it will not attract ingredients of Section 304 of the Indian Penal Code but at the most it may get attracted Section 304-A of the Indian Penal Code. Though the applicant is having some criminal antecedents i.e. in all eight offences are registered against him, out of which five are under Section 65(E) of the Bombay Prohibition Act, one under Section

12(A) of Maharashtra Gambling Act and two are under the Indian Penal Code, it is stated that applicant has been acquitted in all those offences. The applicant is ready to co-operate with the investigation.

4. Per contra, the learned APP submitted that the offence is serious. Because of the act of the applicant regarding illegal excavation of the sand big ditch has been created. The illegal excavation and theft of sand is the fact which can be said to be connected to the further fact of that ditch getting filled in with water and four boys boys aged between 9 to 12, while playing, got drowned. It ought to have been predicted that such big ditch will cause such untoward incident and therefore the ingredients of Section 304 of the Indian Penal Code are attracted here. The custodial interrogation of the applicant is necessary. The applicant is amongst one of those sand mafias who are illegally excavating the sand and the said sand is stored near the bank of the river Sindfana from Tandulwadi site. Statements of the witnesses recorded up till now would show that many times the villagers had taken objection for such illegal excavation of the sand and even have given words of advise to the applicant and

other co-accused persons, yet they had not listen to their suggestions.

5. The FIR has been lodged by one Asaram Pandurang Inkar. In the said incident, his nephew Ganesh Namdeo Inkar, age 9 years and other three boys i.e. Akash Ram Sonawane, age 10 years, Bablu @ Sandeep Gunaji Wakte, age 12 years and Amol Sanjay Kolekar, age 12 years, died due to drowning in the said ditch. The police papers would show that the inquest panchnama was carried out and the provisional postmortem cum death certificate shows that all death are due to drowning. Photographs of the spot are produced and it can be seen that ditch is almost on the bank of the river. The statements of the witnesses have been recorded and all of them have stated that the illegal excavation used to be done in the river and the excavated sand used to be stored on one side of the bank. Because of that illegal excavation in the river bed, a big ditch with huge depth was created and it appears that the boys could not predict the deepness of the same and while playing they entered the ditch and got drowned.

6. It is for the applicant to prove that he had sold the said JCB Machine prior to the incident, to said Mahadeo Fartade. A photocopy of a document executed on non judicial stamp of Rs.100/- is produced but that cannot be considered at this stage. Taking into consideration the seriousness of the offence, no case is made out to grant extraordinary discretionary relief in favour of the applicant.

7. The Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]