

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.424 OF 2022

SHILPA W/O VIJAYKUMAR SHARMA
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. A. D. Soman and Mr. G. V. Padalkar, Advocate for applicant.
Mr. V. M. Kagne, APP for the respondent – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 22.04.2022

ORDER :-

. The applicant is apprehending her arrest in connection with Crime No.200 of 2022 registered with M.I.D.C. Waluj Police Station, Dist. Aurangabad for the offences punishable under Section 379 of Indian Penal Code and under Section 3 of the Mines and Minerals Act, 1966. It will not be out of place to mention here that when the matter was on board on 07.04.2022, voluntary statement was made that in order to show bona fides, the applicant would deposit amount of Rs.1,84,11,600/- within a period of 15 days with this Court. The interim protection was granted. It was with the background that earlier also the informant, who is the revenue officer, had issued notice for payment of penalty for the alleged illegal excavation. Since now that amount has been deposited as per the order of the Court, it can be stated that the

custodial interrogation of the applicant is not necessary.

2. Heard learned Advocate Mr. A. D. Soman for the applicant and learned APP Mr. V. M. Kagne for the respondent – State.

3. It has been submitted now by the learned Advocate appearing for the applicant that the notice that was issued by the revenue officer was illegal. The applicant had taken certain plot from the Government for temporary running of stone crushing unit and it was taken way back on 10.12.1993 as per the order passed by the then Collector, Aurangabad. Royalty has been accordingly paid each time. But now it has been alleged that the applicant, who is the owner of the company, has illegally excavated the stone. Apart from the applicant, notices were given to many persons of which details are mentioned in the FIR. In the FIR also, it was stated that the notice for outstanding amount was given by the Tahsil office on 18.03.2021, but there was no compliance and, therefore, it is then stated that apart from taking action of recovering the said amount of royalty, the said mines and minerals have been stolen and offence has been committed under the Mines and Minerals Act. If we see the period of occurrence that has been stated, it is between 12.12.2015 to 21.12.2015, wherein the E.T.S. measurement was carried out. In spite of all these things, the FIR has been lodged on 12.03.2022, which itself is belated action. The order passed by Additional Tahsil

Office, Aurabgabad on 03.03.2020 is illegal and on the basis of such illegal order, there cannot be an FIR. He also submitted that since now the amount has been deposited, the applicant be protected and the disposal of the said amount be made subject to the decision by the revenue authorities.

4. Learned APP strongly opposed the application and submitted that the purpose for which the lease was granted in the year 1993 to the applicant was different. It was only to run the crushing unit. There was no authority or right given to the applicant to do illegal excavation. But when the E.T.S. measurement was done, which was in fact the joint measurement by the Deputy Director, Mines and Minerals, Aurangabad and Collector's office, it was found that the present applicant had illegally excavated the stones/such material worth Rs.1,84,11,600/-. The order passed by learned Additional Collector on 03.03.2020 was never challenged by the present applicant and, therefore, she cannot now claim any immunity from legal action.

5. It is to be noted from the documents those have been produced that by order dated 10.12.1993, Collector, Aurangabad had given a specified portion i.e. 2 Acres of land from Gut No.225/1 from village Tisgaon, Tq. and Dist. Aurangabad on payment of royalty or lease per year. Condition No.(vi) imposed in that order was that the lessee should

maintain the register in the appended form showing the source from which he has collected the stone for crushing operation. No rights were given to excavate the said land and take out the stone underneath. No doubt, it appears that the lease rent was deposited by the company of the informant, but then time and again thereafter when it was noticed that the excavation of the stones have been done and the demand notices were issued, those were also paid to certain extent, especially on 17.12.2013, 16.07.2014 and 14.01.2015 amount of Rs.1,00,000/-, Rs.1,00,000/- and Rs.2,00,000/- respectively have been paid, which was much more than the lease amount paid earlier, however, on 08.03.2016, she gave an explanation that she is not conducting any mine or quarry at the said place and the measurement of E.T.S. showing that she has excavated the land of 77767 brass is wrong. It appears that no amount is paid since then and on 01.03.2016, for the said excavation of land of 77767 brass, royalty plus penalty that was demanded was to the extent of Rs.6,22,13,600/-. Thereafter again the measurement was done on the request and then that amount was reduced. She has again given say as to what has happened on the earlier years. Her said explanation dated 11.12.2019 and 13.12.2019 was considered and by order dated 03.03.2020, the Additional Tahsildar passed an order that she should deposit amount of Rs.1,84,11,600/-. There is no document produced by

the applicant to show that she had challenged the said order before any competent authority and stay has been granted against the State from proceeding ahead with the recovery. Definitely, there appears to be *prima facie* evidence now for illegal excavation, because the order is not challenged and in that order, base was the measurement done by E.T.S. However, for this purpose, the custodial interrogation is not necessary. Making her available for the purpose of investigation would suffice, so also she has shown bona fides by depositing the said amount in this Court and, therefore, the interim protection granted earlier to the applicant deserves to be confirmed. The deposit of the amount will have to be now invested in the fixed deposit and its disposal would be subject to the outcome of the case that is before the Criminal Courts and not before the revenue authorities. The said disposal should be under Section 452 of the Code of Criminal Procedure only. Accordingly, following order is passed :-

ORDER

- I) Application is hereby allowed.
- II) The interim protection granted earlier vide order dated 07.04.2022 stands confirmed and made absolute. In other words, in the event of arrest of applicant – Shilpa w/o Vijaykumar Sharma in connection with Crime No.200 of 2022 registered with

M.I.D.C. Waluj Police Station, Dist. Aurangabad for the offences punishable under Section 379 of Indian Penal Code and under Section 3 of the Mines and Minerals Act, 1966, she be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.

III) The applicant shall not indulge in any criminal activity nor she should tamper with the evidence of the prosecution, in any manner.

IV) Applicant shall cooperate with the investigation and shall attend the Police Station, M.I.D.C., Waluj, if directed by the Investigating Officer.

V) Registrar (Judicial) to invest the said amount in fixed deposit in Nationalized bank initially for a period of 3 years and go on extending the period till the disposal of the case. The disposal of the said amount would be under Section 452 of the Code of Criminal Procedure.

[SMT. VIBHA KANKANWADI, J.]

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