

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

ANTICIPATORY BAIL APPLICATION NO.441 OF 2022

DADASAHEB KISANRAO SURYWANSHI
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicant : Mr.P. P. More
APP for Respondent : Mr.V.M.Kagne

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 11th April, 2022

ORDER :-

1. The applicant is apprehending his arrest in connection with Crime No.0034 of 2022 registered with Renapur Police Station, District Latur, for the offence punishable under Section 379 read with Section 34 of the Indian Penal Code (IPC) and under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957.

2. Heard learned Advocate for the applicant, who submitted that the First Information Report (FIR) has been lodged belatedly by the Circle Officer. The informant states that he was informed by the Tahsildar that he alongwith his colleagues should go to Gut No.125 at Aarajkheda Shivar, which is belonging to the present applicant and see whether there is illegal excavation of

the sand. This information was received to them through Collector Office and therefore, the entire team went there and it was found that about 4200 Brass sand worth Rs.85,68,000/- was stolen. The excavation was done with a Poclain machine. It was also stated that there was Hyva present at the said place but after the team was seen, the said Hyva, which was filled with sand, was taken away by the Driver. Learned Advocate for the applicant submitted that when the alleged excavation or digging work was done by the applicant in his own land then how it will amount to theft is the question and he was therefore, not required to pay any kind of royalty. The offence has been wrongly lodged and on 10th May, 2021 i.e. earlier a notice was issued to the applicant by Tahsildar, Renapur for alleged excavation of the sand and it was directed that amount of Rs.58,72,500/- should be deposited with the Government. He has produced on record 7/12 extract of the said land.

3. Learned APP for the respondent strongly opposes the application and submitted that the applicant has not deposited the amount in view of the notice issued on 10th May, 2021. Encumbrance in respect of that outstanding amount has been taken in Other Rights column in 7/12 extract and he has not challenged the said order before any competent authority.

Inspite of this, it appears that he was found excavating sand of which value was Rs.85,68,000/-. Therefore, this is a subsequent event and in such circumstance, when such activities are being carried out, the applicant does not deserve any interim protection. Learned APP for the respondent submitted that he has not armed with the Police papers but all these facts can be considered on the basis of the FIR itself.

4. The contents of the FIR are already narrated and therefore, they are not reproduced. Though, the said land appears to be belonging to the applicant yet when there is sand then under the relevant laws i.e. the Mines and Minerals (Development and Regulation) Act, he should get licence for excavation of the same. The Government is the owner of such minerals and definitely he was required to pay royalty. As regards the earlier incident, the Panchanama appears to have been prepared in respect of that excavation by Talathi/Circle Officer, Poharegaon on 7th May, 2021. It was specifically stated in the notice dated 10th May, 2021 that from the said land he has excavated sand weighing 2000 to 2500 Brass with the help of Poclain Machine and the depth would be 50 to 60 feet and the area that was covered was about 500 to 1000 feet and therefore, the fine was imposed under Section 176 of the Maharashtra Land Revenue

Code, 1966. The 7/12 extract also shows that the encumbrance has been shown in respect of the outstanding amount. The applicant has not stated that he has paid that amount. It is not even produced on record as to whether he has challenged that order passed by Tahsildar imposing penalty/fine on the applicant. Now, there is further excavation, under such circumstance, this Court cannot protect a person, who is causing damage to the environment. Merely because the land belongs to him that does not mean that he can cause damage to the ecology and violate the provisions of law.

5. Under such circumstance, case is not made out to grant relief under Section 438 of the Code of Criminal Procedure. Therefore, Anticipatory Bail Application stands dismissed at the threshold.

(SMT. VIBHA KANKANWADI)
JUDGE

SPT