

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

904 ANTICIPATORY BAIL APPLICATION NO.504 OF 2022

RAJESH NARHARI LONDHE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant :Mr. Salunke Sudarshan J

APP for Respondent State: Mrs V. S. Chaudhari

Advocate for Respondent No.2 : Mr. Sharad S. Shinde

CORAM : S. G. MEHARE, J.

DATE : 3rd AUGUST, 2022

ORDER:

1. Heard the learned counsel for the applicant, learned A.P.P. for the State and learned counsel for respondent No.2.

2. It has been alleged against the applicant that he has deliberately measured the land incorrectly with an intention to gain wrongfully from the opponent of the informant. On such allegation, an application under section 156(3) of the Code of Criminal Procedure (for short 'the Code') was filed and the learned Magistrate was pleased to allow the said application. Thereafter, the present crime is registered.

3. The learned counsel for the applicant has raised a legal ground that in view of amended provisions of section 156(3) of the Code, before passing order under section 156(3) of the Code, sanction to prosecute the public servant is mandatory. Apart from that, he has also argued that the alleged measurement has been set aside by the higher authority. There are no elements of deliberate wrong measurement. The applicant has discharged his duties as per the law and both the parties to the measurement were fighting and the

applicant has been made a scapegoat. He may be granted anticipatory bail.

4. The learned APP vehemently argued that the applicant has misused his knowledge of measurement and deliberately measured the land incorrectly to favour the opponent of the complainant. Though his measurement has been cancelled, the dishonest intention of the applicant remains.

5. The learned counsel for respondent no.2 opposed the application and argued on the same line as argued by the learned APP.

6. Perused the papers and the application.

7. The legal issue as regards the sanction before prosecuting public servant is altogether a different issue that may be decided by the Court in an appropriate proceeding. However, it appears that the applicant is an expert in measuring the land. If such expert commits mistake, particularly in measurement of land, an appeal is provided. In this case, in an appeal preferred by the aggrieved, the measurement done by the applicant has been set aside.

8. The prosecution has no case for custodial interrogation. So, considering the role of the applicant, the application deserves to be allowed. Hence the following order

O R D E R

- (i) The application is allowed.
- (ii) Interim protection granted to the applicant by order dated 10th June, 2022 is confirmed on the same terms and conditions.

(S. G. MEHARE, J.)

JPChavan