

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

938 ANTICIPATORY BAIL APPLICATION NO.715 OF 2022

**BHAVESH SHAM MANWANI AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA**

...

Advocate for Applicants : Mr. V. D. Sapkal, Senior Advocate i/b Mr.
Sapkal Sandip R.

APP for Respondent : Mr. S. B. Pulkundwar

Advocate for Assist to APP : Mr. S. G. Chapalgaonkar h/f Mr. Lomte V. M.

CORAM : MANGESH S. PATIL, J.

DATE : 08.07.2022.

PER COURT :

This is an application for anticipatory bail in connection with Crime No. 95/2022, registered with Aundha Nanganth Police Station, District Hingoli for the offences punishable under Sections 379, 447, 427 read with Section 34 of the Indian Penal Code and under Section 48(7) (8) of the Maharashtra Land Revenue Code, 1966.

2. The F.I.R. has been registered at the instance of the intervener/informant who owns a portion of land from Gat No. 94. She alleges that the applicants have illegally carried out excavation in the land Gat No. 94 and have stolen mines and minerals.

3. The learned Senior Advocate Mr. Sapkal would submit that going by the record, it is a pure civil dispute. The applicants have purchased adjoining land Gat No. 90 in the year 1997. Thereafter, even they have purchased a portion from land Gat No. 94 under a sale-deed dated 27.12.2016. The informant herself has purchased only a portion of land Gat No. 94 in the year 2012. He would further submit that the applicants have been carrying out excavation after obtaining necessary

permissions from the revenue authorities. Even till recently they have paid royalty to the government. A pure civil dispute is now being couched in a crime.

4. Learned Senior Advocate Mr. Sapkal would further submit that though the revenue authority under the Maharashtra Land Revenue Code as also Mines and Minerals Act has imposed some penalty, the order has been challenged. Strictly speaking, the incident of excavating mines and minerals may not be covered under the category of theft which requires a dishonest intention to remove the property from the possession of some one.

5. Learned Senior Advocate Mr. Sapkal would further submit that it cannot be ascertained exactly as to from where the mines and minerals have been excavated. The applicants are ready to cooperate the investigating officer. Their custodial interrogation is not necessary. They would be put to disrepute if allowed to be arrested in such a matter and they may be granted anticipatory bail.

6. Learned A.P.P. assisted by the learned advocate Mr. Chapalgaonkar for the informant strongly oppose the bail application. They submit that even going by the applicants' version, they only purchased a part of the western side portion of land Gat No. 94 whereas the measurement carried out by the revenue authorities *prima facie* demonstrates the excavation to have taken place on the eastern side portion. They would further submit that merely paying royalty would not suffice. The applicants have not been able to put on record any permission to excavate the mines and minerals under the relevant law. A copy of the permission produced on the record merely shows that they were permitted to install a stone crusher. At this juncture, this much of material is sufficient to reveal complicity of the applicants in commission of the crime.

7. Learned advocate Mr. Chapalgaonkar would further submit that the informant has solicited information under the Right to Information Act and the Officer has informed about the applicants having never obtained any permission to carryout excavation. He would further point out that going by the assessment done by the revenue authorities, there is huge excavation running into thousands of cubic meters of mines and minerals. The applicants' interrogation is highly necessary to complete the investigation.

8. Lastly, Mr. Chapalgaonkar would submit that in fact in spite of the specific directions by the learned Sub Divisional officer to the officer under the Mines and Minerals Act as also to his subordinates to lodge F.I.R. and initiate a criminal proceeding, they did not act and the informant was required to file the F.I.R.

9. As far as applicability of Section 379 of the Indian Penal Code, the offence of theft in relation to the illegal excavation of mines and minerals, one need not delve much. In a given case, such an incident would constitute theft as made punishable under Section 379 of the Indian Penal Code

10. Papers of the investigation and the papers produced by the informant would clearly demonstrate that indeed there has been excavation of a huge area from the eastern side portion of the land Gat No. 94.

11. The sale-deed of the applicants in respect of a portion from land Gat No. 94 which they purchased in December 2016 would reveal that they had purchased the western side portion of the land Gat No. 94. The portion owned by Kalawati Kishanrao Gore and Gokarna Pandurang Mule is shown situate to the east of the portion of the land purchased by the applicants from the same Gat No. 94. It is thus apparent that the

applicants have not purchased the property which extends up to the eastern boundary of land Gat No. 94.

12. Even according to the applicants themselves they have been undertaking excavation and have installed a stone crusher since the year 1999. However, no such permission or authorization to carryout excavation work has been produced on the record. Even if it is assumed for the sake of arguments that they have been carrying out excavation in the adjoining land Gat No. 90 which they had purchased at earlier point of time, still the fact remains that even for carrying out excavation in that land they *prima facie* do not have any permission.

13. In view of such state of affairs, the custodial interrogation of the applicants does seem to be imperative.

14. The Application is rejected.

(MANGESH S. PATIL, J.)

mkd/-