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

**28 ANTICIPATORY BAIL APPLICATION NO.802 OF 2022**

**VIJAY BABASAHEB JARHAD  
VERSUS  
THE STATE OF MAHARASHTRA**

Mr. K.N. Shermale, Advocate for applicant;  
Mrs. V.S. Choudhari, A.P.P. for respondent

**CORAM : S. G. MEHARE, J.**

**DATE : 18<sup>th</sup> July, 2022**

**PC.**

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent at length.
2. First of all, the learned counsel for the applicant has raised an objection that there is delay in lodging the first information report. He would refer to the Maharashtra Land Revenue (Extraction and Removal of Minor Minerals) Rules, 1968. Rule 3 (1) of the said Rules reads thus:-

**3. Removal of sand by villagers for their own use**

(1) Subject to the provisions of these rules, any resident of any village may, for his own domestic or agricultural purpose, including building of well, may be permitted to remove not more than five brass sand, with the prior permission of the Tahsildar in writing and on payment of royalty as per the prevailing rates from a

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sand ghat, designated by the Collector for this purpose, which, after receipt of environmental clearance, was put to auction but was not successfully bid for or which were specifically reserved for this purpose, by the Collector”

Referring to these Rules, he has vehemently argued that the villagers may with previous permission in writing of the competent officers may remove the earth, stone, *Kankar*, gravel, sand or *murum* from the bed of the sea or from the bed of creek, river or nalla or from any unassessed Government waste land, or any other material the value of which does not exceed the amount specified. If the condition is breached the violator may be punished with such penalty of an amount not more than five times of royalty payable on such minor mineral or Rs.1,000/- whichever is more, as the Collector may, after giving such person an opportunity of being heard, deem fit to impose.

3. The next limb of the argument of the learned counsel for the applicant is that the direction issued by the Honourable Apex Court in the case of **Arnesh Kumar vs. State of Bihar & another**, (2014) 8 SCC 273 for issuing the notice under Section 41-A has not been strictly followed by the Investigating Officer. He has also referred to the observations of the Honourable Apex Court in the judgment dated 11.7.2022 in Misc. Application No.1849 of 2021 in SLP (Cri.)

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No.5191 of 2021 with Misc. Application Diary No.29164 of 2021 in SLP (Cri.) No.5191 of 2021 (**Satender Kumar Antil vs. C.B.I. & anr.**), to support his contention that non compliance of Sections 41 and 41-A of the Code of Criminal Procedure would entitle the accused for grant of bail. He has emphasized that the mandatory provisions of the above sections have not been followed by the Investigating Officer. Therefore, the applicant is entitled to bail.

4. The learned counsel for the applicant also referred to the order of the Honourable Apex Court dated 15.9.2021, passed in Criminal Appeal No.1003 of 2021 (**M.A. Khaliq & ors. vs. Ashok Kumar & anr**) and would point out that the contemptuous action was correctly taken by the Single Judge of the High Court for breach of the directions issued by the Court.

5. Relying on the above judgments and the Rules as well as the facts, the learned counsel for the applicant pressed for the anticipatory bail.

6. It has been alleged against the applicant that the Revenue Officer found the vehicle owned by the applicant carrying sand without permission from the competent authority. The Driver disclosed the name of the applicant. The applicant claimed that he is the owner of the tractor in question. It has been alleged in the first information report that when the Driver was directed to take the said

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tractor to the Tahsil office, the applicant reached there, he promised them that he himself would take the tractor with sand to the Tahsil office but when he reached near Dhopteshwar village, sand from the tractor was unloaded at the say of the applicant and the Driver fled away with the tractor.

7. The learned A.P.P. has strongly opposed the application contending that a serious offence has been committed by the applicant. The applicant ran away with the tractor after unloading sand and thereby attempted to disappear the evidence. However, the tractor in question has been seized.

8. The purpose of recovering the vehicle involved in the offence has been served. In view of this fact, this Court is of the view that the custodial interrogation of the applicant will serve no purpose. Therefore, the application deserves to be allowed. Hence, the following order:-

- i) The application is allowed.
- ii) In the event of arrest, the applicant Vijay S/o Babasaheb Jarhad, be released on bail on furnishing P.B. and S.B. of Rs.50,000/- with one solvent surety for the like amount, in C.R.No. 279 of 2022 registered with Badnapur Police Station, Badnapur, Taluka Badnapur, District Jalna, for the offences punishable under Sections 353, 379 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of

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the Mines and Minerals Act, on the condition to attend the police station on 21<sup>st</sup>, 22<sup>nd</sup>, 23<sup>rd</sup> and 24<sup>th</sup> July, 2022, between 10.00 a.m. and 2.00 p.m. and thereafter as and when called by the police on written notice.

(S. G. MEHARE, J.)

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