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

ANTICIPATORY BAIL APPLICATION NO.841 OF 2022

Satish s/o. Narayanrao Solanke,
Age 53 years, Occu. Agril and Business,
R/o. Gangamasla, Taluka Majalgaon,
District Beed.

.. Applicant

Versus

1. The State of Maharashtra,
Through In-charge Police Station Officer,
Manwat Police Station, Taluka Manwat,
District Parbhani.

2. The Superintendent of Police,
Parbhani, Taluka and District Parbhani.

.. Respondents

Mr P. R. Katneshwarkar, Advocate for applicant;
Mr S. B. Narwade, A.P.P. for respondents/State

CORAM : S. G. MEHARE, J.

DATE : 23rd August, 2022

PC.

1. By this application, the applicant seeks his release on pre-arrest bail, in F.I.R. No.154 of 2022, registered with Police Station, Manwat, District Parbhani, for offences punishable under Sections 379, 431, 432, 439, 109 read with Section 34 of the Indian Penal Code and Sections 48 (7) and 48 (8) of the Maharashtra Land Revenue Code, 1966 (for short, "M.L.R. Code).

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2. The applicant is the highest bidder and was allotted the tender to excavate sand from Wangi Ghat. The prosecution has a case that on the day of the incident, the illegal excavation of sand was going on the sand spot at Wangi river bed at odd hours. The police took the raid and seized the vehicles and other machines used for the illegal excavation of sand. The police have also seized the CCTV cameras from the spot and found that at the relevant time, the CCTV cameras were switched off.

3. The learned counsel for the applicant has vehemently argued that the police and revenue officers have collected contradictory evidence. He would refer to Section 48 (7) of the MLR Code and argue that the Collector has the power to delegate powers to the revenue officers to take action for breach of the conditions of the tender and unauthorized excavation of sand from the sand spot. He also tried to argue that the Revenue authority has direct control over the excavation of sand. Therefore, the police are expected to inform the Revenue Authority. However, the police did not inform the revenue authority. The applicant was not present on the spot at the time of the incident. The police even did not supply CCTV footage to the revenue authority. He points out the conflict between the police and the revenue authority. He has referred to a letter of the Tahsildar dated 20.05.2022 and panchnama drawn by the revenue officers on 20.05.2022. The police did not immediately supply CCTV footage to

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the revenue officer to verify whether there was an unauthorized excavation of sand on the spot of the incident at the alleged time when the police took the raid. At the most, the action can be taken under Section 48 of the MLR Code. The vehicles involved in the offence have already been seized. Nothing is to be recovered from the applicant. Hence, the applicant may be released on anticipatory bail.

4. The learned APP has strongly opposed the application contending that the CCTV cameras, at the relevant time, were switched off. This itself shows the intention of the applicant to commit the theft of sand. As per the contract, it was the responsibility of the bidder/contractor to install the CCTV camera and keep it on. The CCTV footage was to be inspected by the Tahsildar. Everything was done on the spot under the supervision and control of the applicant. Therefore, it cannot be said that the applicant has no vicarious liability. He referred to the spot panchnama drawn by the revenue authority and argued that the revenue authority knew about the raid taken by the police. Hence, they drew the spot panchnama. He has also referred to a letter addressed by the Tahsildar to the Sub-Divisional Officer proposing an action for illegal excavation of sand from the spot of the incident. The applicant might have done unauthorized excavation many times before the incident. Therefore, to know where the sand has been disposed of, the custodial interrogation of the applicant is essential.

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5. There appears to be a conflict between the revenue and the police department, but the fact remains that the police took the raid at odd hours, i.e. the hours when the excavation of sand was not permitted and found that illegal and unauthorized excavation was going on. The police seized various vehicles from the spot of the incident. The police have also intimated the Tahsildar by a letter to take action about the seized vehicles. Various witnesses have been examined. They support the prosecution. The investigating officer has examined the CCTV cameras and found that those were switched off at the relevant time; therefore, there was no recording of the spot of the incident for the relevant time. It also appears that a considerable quantity of the sand has been illegally and unauthorizedly excavated.

6. So far as the application of Section 379 of the Indian Penal Code is concerned, Section 48(7) of the MLR Code provides for action as prescribed therein without prejudice to any other mode of action. That any other mode of action includes the penal action. Therefore, it cannot be accepted that the penalty prescribed in Section 48 of the MLR Code is the only remedial action against unauthorized excavation. There is no bar that the police can not take action against the wrongdoers. However, the police and revenue authority should coordinate against the activities for the theft of sand.

7. A serious offence of committing theft has been registered against the applicant, who is the bidder. Prima facie material is

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available against the applicant. The illegal excavation of sand is done at odd hours. It is a loss of revenue to the Government. The cases of illegal and unauthorized excavation of sand under the garb of a contract are mushrooming daily. Considering the allegations levelled against the applicant and the nature of the offence, this Court is not inclined to grant anticipatory bail to the applicant. Hence, the application stands dismissed.

8. At this stage, the learned counsel for the applicant prays that the *interim* protection granted to the applicant may be extended for three weeks. At his request, the *interim* protection granted to the applicant would continue for three weeks from today.

(S. G. MEHARE, J.)

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