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

ANTICIPATORY BAIL APPLICATION NO.909 OF 2022

**MOHAMMAD ABDUL SAMI S/O ABDUL BASIT
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. Shaikh Wajeed Ahmed
APP for Respondent/State : Mr. S.B. Narwade
...

CORAM : S.G. MEHARE, J.

DATED : 12th AUGUST, 2022

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. The FIR reveals that the raid was taken on 21.05.2022 in the river bank on the sand spot at 17.45 hours. It is alleged in the FIR that various vehicles like Haiwa, Tippers, Tractors, Poclain Machines, Motorcycles etc. were standing there and a poclain machine was loading the trucks with the sand. It is also alleged that the sand was excavated with the help of engine boat. When the persons working there saw the police, they fled away. However, the vehicles were recovered from its drivers.
3. Learned counsel for the applicant would submit that the applicant is the tenderer. On 21.05.2022, his tender was in force. The contract of tender allowed the applicant to excavate the sand

between 06.00 am to 06.00 pm. The sand excavation was going on within the period/time allowed by the Collector. Therefore, no offence is made out. The allegations of diverting the water flow of the river, laying stones and sand in the river and constructing the bandh are absolutely false. The applicant has committed no offence. Therefore, he may be granted anticipatory bail.

4. Learned APP has strongly opposed the application contending that the applicant has contravened the terms of the contract. They were trying to excavate the sand illegally with an intention to commit theft. They have committed serious offence punishable under the Environment (Protection) Act, 1986. They have put the Government to the heavy loss. Therefore, the custodial interrogation of the applicant is essential.

5. The FIR reveals that on the date of incident, the police took a raid at 17.45 hours which was the time allowed to the tenderer to excavate the sand. The prosecution has no case that the sand was unauthorizedly excavated. The prosecution has not denied that the tender contract of the applicant was in force on the date of the alleged incident. Considering the allegations levelled in the FIR, it appears that the excavation of the sand was going on in the permitted hours. Whether the provisions of the Environment (Protection) Act, 1986 are applicable or not is the question of fact, however, *prima*

facie, the applicant has a strong case for anticipatory bail. Hence, the following order :

ORDER

(A) The Application is allowed.

(B) In the event of arrest, the applicant, Mohammad Abdul Sami S/o Abdul Basit, be released on bail, on executing P.B. and S.B. of Rs.01,00,000/- (One Lac) with one solvent surety in the like amount in Crime No.136 of 2022 registered with Parbhani Rural Police Station, Taluka and District Parbhani for the offence punishable under Sections 379, 430, 431, 432, 439, 109 and 34 of the Indian Penal Code, Section 48 (7) (8) of the Maharashtra Land Revenue Code and Section 3, 15 (1) (2) of the Environment (Protection) Act, 1986 r/w Section 37 (1), 135 of Maharashtra Police Act, on the condition that he shall attend the police station as and when called by the Investigating Officer on written notice and shall not tamper with the prosecution witnesses.

(S.G. MEHARE, J.)