

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.922 OF 2022

MOHAMMAD MUNTAJIB KHAN S/O WAHEED KHAN
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Satej S. Jadhav
APP for Respondent : Mr. S. B. Narwade
...

CORAM : S. G. MEHARE, J.

DATE : 11-08-2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent/State.

2. The applicant has a case that he is a tenderer of sand mining for Mauje Daku Pimpri Ghat on one side of the river bank which is in Parbhani district and there is another sand Ghat on the another bank of the said river which is falling in Beed district. He lodged the complaint to the Tahsildar on 17.05.2022 that tenderer of Mauje Pohner Ghat and their representatives are illegally excavating the sand from the river and encroached upon the Ghat allotted to him. He has also submitted complaint to the Revenue Officer. However, the police have misconception that the excavation of the sand was illegally done by the applicant in the off-hours. He has no concern with the alleged poelain and JCB

machine seized by the police. The Revenue Officer had visited the spot twice before the alleged incident. However, nothing adverse was found against the applicant. There were many persons, who were unhappy with the allotment of tender to the applicant. Some persons were motivated to create the evidence against the applicant. Therefore, false report is lodged against the applicant with the help of villagers and village Sarpanch. The applicant never excavated the sand in the off-hours i.e. night hours and he had never stolen sand. He would point out that the so-called JCB machine standing in the river bed were taken away towards Sirsala Police Station i.e. in Beed district. That itself shows that the persons stealing sand in night hours were from the Beed district and not from Parbhani district. Therefore, anticipatory bail may be granted to him.

3. Per contra, the learned APP has vehemently argued that recently the Tahsildar has submitted his explanation to the Police Inspector, Police Station Pathri and informed him that the police had informed Revenue Officer about the raid taken on 19.05.2022 at about 2.00 a.m. He has also referred to complaints made by the villagers and the panchnama drawn by the Revenue Officer showing that the poclain machine stationary in the police station was seized and again kept there. He has vehemently argued that in the first information report the name of the applicant was disclosed. The applicant is now taking the advantage of the

situation. The investigating Officer has collected the material to believe that the applicant has stolen the sand. The applicant was the person under whose directions the theft of sand was committed. He tried to convince the court that everything was done on the spot of the incident to the knowledge of the applicant. There were various complaints against him for illegal excavation of sand and threatening the villagers. Huge quantity of sand has been stolen, therefore, the custodial interrogation of the applicant is necessary.

4. Before advertng to the facts in dispute, this Court preferred to refer a complaint dated 04.04.2022 which was signed by various villagers and the village Sarpanch of Village Daku Pimpri and another report dated 12.04.2022. Reading the complaint, it appears that this is nothing but the motivated complaint on the part of the villagers and village Sarpanch. In a report dated 04.04.2022, the same allegations have been made. After going through the signatures, it does not inspire the confidence that the signatories of the application were knowing about the provisions of the law. Such type of contention raises a serious doubt about genuineness of the complaint.

5. The learned APP has vehemently argued that name of the applicant was immediately transpired after the raid, however, the FIR does not reveal so. The Investigating Officer, in summary of

the FIR, has added the name of the company of the applicant. The investigation was not made on the complaint by the applicant regarding theft committed by another contractor.

6. The applicant has very specific case that the another contractor was entering into the spot allotted to him. Therefore, the Revenue Officer had visited the spot, but he did not visit the spot in the night hours when the alleged theft was committed by another contractor. The prosecution has no evidence that so-called vehicles seized were owned and controlled by the present applicant. Considering the facts of the case and specific defence of the applicant, the Court is of the view that this is a fit case for anticipatory bail. Hence, the order -

- i) The application is allowed.
- ii) In the event of arrest, applicant Mohammad Muntajib Khan s/o. Waheed Khan be released on bail, on furnishing PB and SB of Rs.50,000/- with one solvent surety of like amount, in C.R. No. 0222 of 2022 registered with Pathri Police Station, District Parbhani, for the offence punishable under Sections 379, 430, 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.

**(S. G. MEHARE)
JUDGE**