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

ANTICIPATORY BAIL APPLICATION NO.941 OF 2022

**BHANUDAS GANGADHARRAO DIVAN
VERSUS
THE STATE OF MAHARASHTRA**

...

Advocate for Applicant : Mr. Rohit P. Patwardhan h/f Mr. S.S. Jadhav
APP for Respondent/State : Mr. S.B. Narwade

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CORAM : S.G. MEHARE, J.

DATED : 06th SEPTEMBER, 2022

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. The applicant was a auction purchaser of the sand spot at village Manjrath adjoining to gut nos.7, 8, 9, 10 and 11. It has been alleged against the applicant that on 28.05.2022, the persons working on his behalf were excavating the sand with the help of machines at 11.00 am. The prosecution has a case that excavating the sand with the help of machines is an offence of theft. The report has been lodged by the Village Talathi, who was there on the spot of the incident to take a raid.
3. Learned counsel for the applicant would submit that on 23.05.2022, he moved an application to the Collector for cancellation of the tender since there was high level water and the road to

transport the vehicle was not available. Therefore, no offence is made out.

4. Learned APP has strongly opposed the application contending that excavating the sand by using the machines is a theft. The applicant has committed a serious offence and his custodial interrogation is essential to know how much quantity of sand he has been illegally excavated. Therefore, the application deserves to be dismissed.

5. It is not in dispute that on 28.05.2022, the contract of the applicant was in force. He was allowed to excavate the sand from 06.00 am to 06.00 pm. There was written terms of the contract between the Collector and the auction purchaser. One of the condition in the agreement as usual found was that the tenderer shall not excavate the sand by using the machines. If the machines have been used to excavate the sand, the contract may be cancelled forthwith with some penal action. A simple question that arises for consideration is whether the activities of excavating the sand at the allowed hours with machines amounts to theft? Considering the facts of this case and the terms of the contract, this Court is of the view that excavating the sand at allowed hours with machines may not amount to theft. However, it can be breach of the terms of contract for which a specific action has been provided under the law as well as terms of the contract. Since the contract was in force, the case of the

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prosecution that the applicant was stealing the sand may not be accepted. The vehicles and machines used for excavating the sand have already been seized. In view of the fact and the law, this Court is of the view that the application deserves to be allowed. Hence, the following order :

ORDER

- (A) The application is allowed.
- (B) Interim protection granted to the applicant by order dated 25.07.2022 is confirmed on the same terms and conditions.

(S.G. MEHARE, J.)