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

ANTICIPATORY BAIL APPLICATION NO.1009 OF 2022

Vinayak S/o. Vijay Bahirat,
Age : 32 years, Occu : Business,
R/o. Vrandavan Colony, Karegaon Road,
Parbhani, Dist. Parbhani ...Applicant

Versus

The State of Maharashtra
Through Police Station Gangakhed,
Tal. Gangakhed, Dist. Parbhani. ...Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.1064 OF 2022**

Vinayak S/o. Vijay Bahirat,
Age : 32 years, Occu : Business,
R/o. Vrandavan Colony, Karegaon Road,
Parbhani, Dist. Parbhani ...Applicant

Versus

The State of Maharashtra
Through Police Station Gangakhed,
Tal. Gangakhed, Dist. Parbhani. ...Respondent

Mr. Mahesh S. Deshmukh h/f Mr. Sushant B. Choudhari, Advocate for
Applicant.
Mr. V.M. Kagne, APP for Respondent/State.

CORAM : S. G. MEHARE, J.

**DATE OF RESERVING THE ORDER : 30th August, 2022
DATE OF PRONOUNCING OF ORDER : 5th SEPTEMBER, 2022**

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ORDER :

1. The applicant approached this Court under section 438 of the Code of Criminal Procedure for pre-arrest bail.
2. The applicant is the auction purchaser of the sand spot at village Vazur, District Parbhani. His tender was accepted, and the Collector, Parbhani, issued an order to excavate sand valid till 09.06.2022.
3. Police Station Gangakhed took a raid on the sand spot on 24.05.2022 at 16 hours. A crime, bearing no. 0206/2002 was registered against the applicant and seventy-eight others for the offences punishable under sections 379, 430, 431, 432, 439, 109, and 34 of the Indian Penal Code and under Sections 48(7) and 48(8) of the Maharashtra Land Revenue Code, 1966.
4. It has been alleged against the applicant that when the raid was taken 22 hyvas, 2 trucks, 5 Tippers, 1, Eicher, 5 Poclains and one boat were standing in the river basin. The sand was being excavated from the river with the help of an engine Boat and was unloading near the bund constructed by the applicant in the river basin. The stored sand was filled in the trucks, hyvas, and tippers with poclain. Seeing the Police, the persons there had unloaded the sand from the above vehicles and started running away, leaving some vehicles there. The Police apprehend a few drivers. The Police asked them about the

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transit/transport passes, and they told the Police that they did not have any documents. A bund was constructed in the river unauthorizedly with murum, stone and tree branches and caused a disturbance to the natural flow of the river. They were stealing the sand from the river at odd hours. The Police seized all the vehicles used for stealing the sand and other vehicles available there.

5. The Police have also registered another crime bearing no. 228/2022 for the same offences against the applicant and others. In that case, the Police took a raid on 22.05.2022 at about 4.00 p.m. The Police found two poclains were excavating the sand unauthorizedly. They did not have valid documents to excavate the sand. The driver and cleaner, who were apprehended on the spot, told the Police that they were excavating the sand on the instruction of the applicant and poclain owner Vasant Tehare.

6. The applicant is seeking pre-arrest bail on the grounds that in a contract with the Collector, a clause of fine is incorporated for the breach of the conditions, and therefore, FIR registered against the applicant is illegal. His arrest would hamper his reputation. The applicant was not present on the spot. He is a contractor; hence, arraigned as an accused. Since there are terms of penalty in the contract, the Police have no role in registering the FIR. All the vehicles were empty and parked at the Sand Depot so that same

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would be loaded in the morning. JCB machine is used for loading the truck. Hence, no illegality has been committed. He is falsely implicated in the crime. The complainant has no case that the trucks and other vehicles were loaded with sand. The Vehicles were seized, and some have been released on supratnama by the learned Magistrate. In a crime no. 228/2022, it has been vehemently argued that on the day of the alleged incident, the sand spot was closed. Hence, no offence is made out. That apart, the contract was in force. The custodial interrogation is not essential.

7. The learned counsel Shri Karpe for the applicant vehemently argued that the Police did not inform the Revenue Authority before the raid. He referred to a report of the Sub-Divisional Officer dated 19.05.2022. He would point out that the Tahsildar had specifically contended that the Police did not inform the Revenue Authority before the raid. When they were on the spot at 10 a.m., the Police did not make them a part of the investigation. He has also mentioned the role of the Police in Minor Mining cases. He has correctly reported to the Collector that no action could be taken against the empty vehicles. When they visited the sand spot, the machines and other vehicles were not found. In a nutshell, he would argue that the Revenue Officers have played the role as per the law, and the applicant is facing the action proposed against him. He has also argued that there

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were contra panchanamas and reports as regards the presence of the vehicles on the sand spot. The Police are deliberately lodging the FIR against the applicant. The Police and Revenue Department appear to have a conflict on the powers to take action. No incident as such happened. Hence, the application may kindly be allowed.

8. Per contra, the learned APP has vehemently argued that there was no conflict of power between the Police and Revenue Authority. The Police had informed the Revenue Officer; hence, they came on the spot of the incident. The investigation Officer submitted a report in detail to the Sub-Divisional Officer on 17.05.2022 and specifically informed that in Notecam photos and video shooting, a poclain was seen excavating the sand, and the numbers of Vehicles have also been seen. The Sub-Divisional Officer has specifically mentioned in his report dated 19.05.2022 that a poclain is seen excavating the sand in the video and photographs. The Police have taken action within the four corners of the law. The sand was stolen under the directions of the applicant. The sand spot was handed over to the applicant. Hence, he had complete control over the spot till the date of the contract. He is responsible for every wrong that happened on the sand spot. The custodial interrogation of the applicant is essential to know where the stolen sand is sold and how many times such theft was committed before the incident. The Government has suffered a

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huge revenue loss. The environment is highly affected due to the change in the natural flow of the river. Constructing a bund in the river is also an offence. If the case of the applicant in crime no.228/2022 is accepted, then he has no reason to excavate the sand. Hence, he is not entitled to pre-arrest bail.

9. As per clause 29 of the Collector's Order dated 20.04.2022, granting permission to excavate the sand, the excavation was allowed from 6 a.m. to 6 p.m. Excavation shall be done by human resources only. Transport of sand was also allowed in the above time only. It was a specific condition that the excavation or transportation of sand done before and after the above time would be treated as illegal excavation and transport.

10. Section 48(7) of the MLR Code provided that, without prejudice to any other mode of action that may be taken against such person, the State Government shall impose a penalty for illegal excavation, construction of bund etc. Sub-section 8 of the said section provides for confiscation and seizure of such vehicles used for illegal excavation. After reading the above provisions, it cannot be accepted that the Police cannot take action for stealing and transporting the sand illegally. No doubt, the Police and Revenue Department should coordinate the actions to be taken in such cases because the Revenue Department has the powers to take the actions as provided in the

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above section. There appears to be some conflict between the two departments, but the fact remains that the Police have collected the *prima facie* evidence that at the prohibited hours, the sand was excavated with the help of machines. A large number of vehicles were on the sand spot, and seeing the Police, the persons present there started running. The photographs and video also corroborate the prosecution case. The Revenue Authority drew panchanama at 10 a.m., so it is natural that there would be no vehicles filled with sand. The Police have a specific case that, when they reached there, the sand loaded in the vehicles was unloaded, and the persons there started running. In crime no. 228/2022, the applicant has a case that the spot was closed on the day of the alleged incident. Then why were his persons excavating the sand during day hours? When he was prohibited, then it was a more serious offence. The persons apprehended on the spot immediately disclosed the name of the applicant. The applicant has no case that he had no control over the sand spot and the persons working there were not engaged by him. The illegal excavation and stealing of the sand are mushrooming in this area. Excavating the sand in breach of the contract condition is a serious offence. That highly affects the ecological balance. The possibility of stealing the sand on a large scale before the present incident cannot be ruled out. To know the previous illegal activities

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and sale of sand unauthorizedly excavated, the police custody of the applicant is essential.

11. In view of the facts of the case, this court is of the view that the applicant has no good case for pre-arrest bail. Hence, both applications stand dismissed.

(S. G. MEHARE, J.)

12. After pronouncement of the aforesaid order, the learned counsel for the applicants prays for continuation of the interim protection granted by this Court by orders dated 04.08.2022 and 12.08.2022. The interim protection granted to the applicants is continued for a period of three weeks from today.

(S. G. MEHARE, J.)

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