

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1608 OF 2022

Shaikh Salim Abdul Quadar Patel Applicant

Versus

The State of Maharashtra
and another Respondents

....
Mr. Abhaysinh K. Bhosle, Advocate for the Applicant
Mr. P.K. Lakhotiya, APP for Respondent – State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 09th December, 2022

ORDER :

1. The applicant apprehends his arrest in connection with Crime No. 0382 of 2022 registered with Pachod Police Station, District Aurangabad for the offence punishable under section 379 of the Indian Penal Code and section 21 of Mines and Mineral (Development and Regulation) Act, 1957.

2. Circle Officer, Adul lodged FIR alleging that the applicant was allotted sand spot at *Mouje Gharegaon* in *Sukhna* river for excavation of 2968 Brass sand. The period of excavation was from 11/02/2022 to 09/06/2022. After

completion of the said period, when the Deputy Superintendent of Land Records and Assistant Engineer, Grade-I, Public Works Department conducted joint ETS measurement on 12/07/2022, it was found that from Gut Nos. 02 and 04, and adjoining area, total 3214 Brass sand was excavated. The applicant has excavated 880 Brass sand during the period from 12/02/2022 to 08/03/2022. Therefore, the applicant has illegally excavated 2334 Brass excess sand, for which the Sub Divisional Officer has imposed penalty of Rs.7,00,20,000/- on the applicant. Thus, the applicant has committed offence punishable under section 379 of the Indian Penal Code and section 21 of Mines and Mineral (Development and Regulation Act), 1957.

3. Heard the learned advocate for the applicant and the learned Additional Public Prosecutor for the respondents – State. Perused the investigation papers.

4. From the documents annexed along with the application, and the investigation papers, it is clear that the sand spot was given in possession of the applicant on 11/02/2022. Thereafter, by order dated 08/03/2022, Tahasildar, Paithan directed the applicant to stop excavation on the basis of order passed by this Court. Accordingly, the

applicant stopped excavation of sand and *panchanama* to that effect was conducted on 09/03/2022. By letter dated 11/03/2022, Tahasildar, Paithan directed Deputy Superintendent, Land Records to conduct ETS measurement of the sand spot allotted to the applicant in Gut Nos. 2, 4, 111, 112 and 115 and submit a report. No such ETS measurement appears to be conducted.

5. On 22/03/2022, the applicant informed Tahasildar that he has already stopped excavation of sand from the spot allotted to him, however, from the said spot, illegal excavation of the sand with the help of JCB, Poklane machins and Hyva Truck is going on.

6. FIR at Crime No.0114 of 2022 is registered at Pachod Police Station for the offences punishable under sections 109, 186, 379 of the Indian Penal Code and sections 39, 192 of the Motor Vehicles Act, and sections 1, 2, 3, 4 and 5 of the Mines Act, 1952, against the persons who were found illegally excavating the sand, and the JCB and Hyva Turck containing 5 Brass sand were seized.

7. It is clear from the remarks given in the visit book kept at the sand spot, by the Tahasildar at the time of surprise

visit that, at no point of time the applicant has used JCB or other machines to excavate the sand. Admittedly, CCTV cameras were installed at the sand spot allotted to the applicant.

8. Before imposing penalty of Rs.7,00,20,000/-, according to the applicant, no fair opportunity was given by the Sub Divisional Officer. The order imposing the penalty is already challenged before the Assistant Commissioner.

9. According to the applicant, the Sub Divisional Officer has not given fair opportunity of hearing to the applicant before imposing penalty of Rs.7,00,20,000/- on the applicant. The applicant has already challenged the order of Sub Divisional Officer before the Assistant Commissioner.

10. Though the learned Additional Public Prosecutor vehemently opposed the prayer of applicant contending that the applicant has caused huge revenue loss to the public exchequer, and has stolen huge quantity of sand, the said argument is not supported by material collected during the course of investigation.

11. *Prima facie*, it appears that the applicant has stopped excavation of sand on 09/03/2022. The applicant had informed

Tahasildar about illegal excavation on the said sand sport. Pursuant to which one FIR is already registered against different persons. Though by letter dated 11/03/2022, ETS measurement was directed to be conducted, for the reasons best known, same is not conducted at that point of time.

12. It is thus clear that after 4 months of the applicant stopping excavation of sand, the ETS measurement is conducted in the month of July, 2022.

13. Considering the aforesaid facts, *prima facie*, the allegations of excess excavation of sand by the applicant cannot be believed. In the peculiar facts of the present case, pre-trial custodial detention of the applicant is not necessary.

14. The application is therefore allowed. In the event of arrest of applicant in Crime No. 0382 of 2022 registered with Pachod Police Station, District Aurangabad for the offence punishable under section 379 of the Indian Penal Code and section 21 of Mines and Mineral (Development and Regulation) Act, 1957, the applicant shall be released on bail on executing PB and SB of Rs.15,000/- with one surety in the like amount.

15 Till filing of the charge sheet, the applicant shall attend the concerned police station as and when called by the investigating officer and co-operate in the investigation. The applicant shall not tamper the prosecution evidence.

16. Needless to state that observations made in this order are limited to the extent of deciding the anticipatory bail application. The revenue authorities shall not be influenced by these observations.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane