

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1623 OF 2022**

Ganesh Dattatray Kolekar ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. B.A.Lawate, for Applicant.
Mrs. J.S.Lohakare, APP, for State.
Mr. S.S.Jagtap, IO/ASI Pandharpur Gramin Police Station, present.

CORAM: N.J.JAMADAR, J.

DATE : 22nd JUNE, 2022

P.C.

1. Heard the learned Advocates for the parties.
2. This is an Application for pre-arrest bail in connection with C.R.No.76 of 2022 registered with Pandharpur Rural Police Station, Solapur for the offence punishable under Section 379 of the Indian Penal Code and under Section 4 and 21 of the Mines and Minerals (Development & Regulation) Act, 1957.
2. The indictment against the Applicant is that on 19th February, 2022, the first informant while being posted at Bhalwani Beat, noticed a truck, bearing Registration No.MH-12/RY-7449, carrying the sand. The truck was intercepted. The driver of the truck namely Ganesh Mayappa Bhanvase, the co-accused, upon being asked to, could not furnish any receipt about the royalty having been paid on the said sand which was being so transported. The investigation revealed that the

Applicant is the owner of the said vehicle in which the sand was being transported.

3. Apprehending the arrest, the Applicant preferred an Application for pre-arrest bail before the learned Additional Sessions Judge, Pandharpur. By an order dated 9th June, 2022, the application for pre-arrest bail came to be rejected. Hence, this Application

4. The learned Counsel for the Applicant submitted that the alleged stolen property and the vehicle have already been seized and the driver of the vehicle has been arrested. Thus, at this stage, the custodial interrogation of the Applicant is not warranted for an effective investigation.

5. The learned Advocate for the Applicant further submitted that the very action of seizure of the sand and the truck by the Police is not in accordance with law. Inviting the attention of the Court to the provisions contained in Section 23-B of the Mines and Minerals (Development & Regulation) Act, 1957, which confers the power of search on any Gazetted Officer of the Central or a State Government authorized by the Central or a State Government, as the case may be, the learned Advocate for the Applicant would urge that the very seizure is unlawful. It was submitted that the Tahsildar, who is otherwise empowered under the Maharashtra Land Revenue Code, 1966, has also not seized the alleged stolen mineral product. Therefore, on this count, the Applicant deserves to be released on pre-arrest bail.

6. The learned APP, on the other hand, invited the attention of the Court

to three prior offences of identical nature having been registered against the Applicant at Sangola and Pandharpur Rural Police Stations. Those three crimes have been registered, inter alia, for the offences punishable under Sections 353 and 379 of the Indian Penal Code and under Sections 9 and 15 of the Environment (Protection) Act, 1986.

7. The situation which thus obtains is that the Applicant has been pursuing a continuous course of action, which prejudicially affects the environmental protection. The Applicant seems to be habitually involved in excavating and transporting the minerals in breach of the Regulations. Section 4(1-A) of the Mines and Minerals (Development & Regulation) Act, 1957, provides that no person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of the said Act and the rules made thereunder. Section 21 of the said Act, prescribes punishment of imprisonment which may extend to five years with fine for contravention of the provisions of sub-section (1) or sub-section (1-A) of Section 4 of the said Act.

8. At this stage, there is prima facie material to indicate that the Applicant is the owner of the truck in which the sand was being transported. It would be difficult to hold that the Applicant was completely unaware of the purpose for which the vehicle was put to use. This fact coupled with the antecedents of the Applicant dissuades the Court from exercising the discretion in favour of the Applicant.

9. As far as the challenge to the initiation of the prosecution based on the provisions contained in Section 23-B of the said Act, it would be suffice to note that the offending truck was intercepted by the police while the sand was being allegedly transported therein. It is not the case that the police officer conducted a search, during the course of which the mineral was found to be extracted or transported, in breach of the provisions of the said Act. The challenge on this count is, therefore, of no assistance to the Applicant so far as the prayer for pre-arrest bail.

10. Hence, the Application stands rejected.

(N.J.JAMADAR, J.)