



Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 3079 OF 2023

Akash @ Revanath Eknath Kapase

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. Rupesh A. Zade with Ms. Priyanka Gupta, for Applicant.

Mr. M. G. Patil, APP for State.

CORAM:- N. J. JAMADAR, J.

DATED:- 2nd NOVEMBER, 2023

PC:-

1) Heard the learned counsel for the applicant and the learned APP for the State.

2) This application is preferred for pre-arrest bail in connection with C.R. No. 508 of 2022, registered with Daund Police Station, for the offences punishable under Sections 379 and 439 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code"), Sections 9 and 15 of Environmental Protection Act, 1986, Sections 4, 21 and 23 of Mines and Minerals (Development and Regulation) Act, 1957 and Section 3 of Prevention of Damage to Public Property Act, 1984.

3) The gravamen of indictment against the applicant is that on 12th October, 2022 Sub-Divisional Police Officer, pursuant to an intimation, conducted a raid on the bank Bhima river at Shirapur. The co-accused were apprehended while excavating sand by JCB machine. On truck was also found for the transportation of excavated sand. Co-accused Sandip Kapse and Ramchandra Kapse were apprehended at the spot. The applicant allegedly fled away.

4) The learned Counsel for the applicant submitted that the applicant was not apprehended at the spot nor the applicant is the owner of any of the boats or JCB or truck used at the time of the alleged illegal excavation and transportation of the sand.

5) The learned APP submitted that though the applicant was not apprehended at the spot, the persons who were apprehended have named the applicant as one of their accomplice.

6) Prima facie, it appears that two persons were apprehended at the spot. The driver had fled away. The first informant alleged that there were other persons who also escaped taking advantage of the darkness. At this stage, the material against the applicant seems to be the statement allegedly made by the co-accused that the applicant had accompanied them at the time of alleged occurrence. Having regard to the nature of the

accusation, such a statement, in the absence of allegations that the applicant was found excavating and transporting the sand illegally, does not constitute sufficient material to deprive the liberty of the applicant. The boats, vehicles and other equipment used for illegal excavation and transporting of the sand have already been recovered. Thus custodial interrogation of the applicant does not seem to be warranted for effective investigation.

7) I am, therefore, inclined to exercise discretion in favour of the applicant.

8) Hence, the following order:-

ORDER

I) In the event of arrest of the applicant in connection with C.R. No. 508 of 2022, registered with Daund Police Station, for the offences punishable under Sections 379 and 439 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code"), Sections 9 and 15 of Environmental Protection Act, 1986, Sections 4, 21 and 23 of Mines and Minerals (Development and Regulation) Act, 1957 and Section 3 of Prevention of Damage to Public Property Act, 1984, the applicant be released on bail on executing a PR

Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

II) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

III) The applicant shall co-operate with the investigation and attend Daund police station on 9th and 10th November, 2023 in between 10.00 am to 1.00 pm and, thereafter, as and when directed by the Investigating Officer.

IV) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

V) The application stands disposed.

[N. J. JAMADAR, J.]