



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.588 OF 2023**

1. Babu s/o Ananda Gunjal
Age 80 years, Occ: Agri
R/o Ghospuri, tq. Nagar
District Ahmednagar.
2. Sanjay s/o Appasaheb Dhamne
Age 56 years, Occ: Agri
3. Popat s/o Bhau Dhamne
Age 62 years, occ: Agri
4. Dnyandeo s/o Bhau Dhamne
Age 60 years, Occ: Agri
5. Vishal s/o Sukhdeo Dhamne
Age 36 years, Occ: Agri
6. Pramod s/o Sukhdeo Dhamne
Age 39 years, Occ: Agri
No. 2 to 6 are residence of Sarola Kasar,
Taluka Nagar, District: Ahmednagar.

..Applicants
(Orig. Accused)

Versus

1. The State of Maharashtra
Through Incharge, Nagar
Taluka Police Station,
District Ahmednagar.
2. Sachin s/o Sitaram Shinde,
Age 38 years, Occ: Service
R/o: Nimgaon Wagha, tq. Nagar
District: Ahmednagar.

..Respondents

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Mr. D. R. Markad, Advocate for the Applicants.
Mr. A. V. Lavte, APP for Respondent No.1.
Respondent No.2 is served.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

**Reserved on : 19th SEPTEMBER, 2024.
Pronounced On : 08th OCTOBER, 2024.**

JUDGMENT (Per S. G. Chapalgaonkar, J):-

1. The applicants have approached this Court under Section 482 of the Criminal Procedure Code thereby praying to quash and set aside FIR in Crime No.618/2022 dated 02.09.2022 registered with Ahmednagar Taluka Police Station, Dist. Ahmednagar for the offence punishable under Section 379 of the Indian Penal Code and consequential criminal proceeding in R.C.C. No.812/2023 pending before Chief Judicial Magistrate, Ahmednagar.

2. The respondent no.2-Kamgar Talathi lodged report to police station alleging that in pursuance to an application made by Mr. Ram Suryabhan Khade, the Sub Divisional Officer constituted Minor Mineral Squad headed by Shri. V. D. Pawar, Naib Tahsildar and other employees. On 14.08.2022 the Squad inspected land Gut No.588 at Ghospuri and noticed that 604 brass earth material and stone metal has been excavated by Mr. Babu Ananda Gunjal, i.e owner of land. Similarly, on inspection of Gut No.136 at Sarol Kasar it was noticed that 9072 brass earth material and stone metal has been excavated by land owner Sanjay Appasaheb Dhamane. Similarly, on inspection land from Gut No.136, owned by Popat Bhau Dhamane and Dnyandeo Bhau Dhamane, it was noticed that 11,016 brass earth material and stone metal has been excavated. On inspection of land Gut No.329 it was noticed that 47,154 brass earth material and stone metal has been excavated by land owners namely Vishal Sukhdeo Dhamane and Pramod Sukhdeo Dhamane. All those farmers were not holding requisite authorization from competent authority for excavation of minor mineral nor they had paid royalty for that purpose. Accordingly, report of inspection was submitted to the Divisional Commissioner, Nasik and Additional Collector Ahmednagar. In pursuance of their

directions and authorization, complaint of theft of minor mineral has been filed against accused persons.

3. Eventually, Crime No.618/2022 dated 02.09.2022 came to be registered with Ahmednagar Taluka Police Station for offence punishable under Section 379 of the Indian Penal Code against applicants. The investigation progressed. The statements of witnesses were recorded and finally charge-sheet has been filed against all the applicants for aforesaid crime. Now Regular Criminal Case No.812/2023 is pending trial before Chief Judicial Magistrate at Ahmednagar.

4. Mr. Markad, learned Advocate appearing for the applicants submits that applicants are farmers. The State of Maharashtra had promulgated a scheme for construction of farming pond within the fields of farmers and grants were made available for that purpose. The applicants have availed benefit of scheme and constructed farming pond. They had obtained necessary permission for excavation. As such, they are not guilty of theft as alleged in the FIR. Mr. Markad would invite attention of this Court to the Government Resolution dated 17.02.2016 which prescribes aforesaid scheme, the 7/12 extracts of lands of respective applicants, work order for construction of farming pond measuring 30 mtr. x 30 mtr. x 3 mtr., the receipts under Minor Minerals Extraction Rules in the name of persons, who have actually extracted minor minerals and notices served upon respective applicants under Sections 48(7) and (8) of the Maharashtra Land Revenue Code by Tahsildar, Ahmednagar. Mr. Markad would further submit that after excavation, minor mineral was used for construction of side walls of farming pond and leveling of the lands. He would submit that in such a situation prosecution

initiated against applicants for offence punishable under Section 379 of the Indian Penal Code would not be sustainable. As such, he urges to quash and set aside FIR and consequential criminal proceeding.

5. Per contra, Mr. Lavte, learned APP appearing for the respondent-State vehemently opposes the prayer in the application. He would submit that although applicants are owners of respective lands, the minor mineral is property of the Government. The excavation of minor minerals and its disposal by applicants was unauthorized and without payment of royalty. He would further submit that during the course of investigation, it is revealed that huge quantity of minor mineral has been illegally excavated and disposed of for commercial purpose. He would, therefore, submit that there is triable material against each of the applicants and urges to reject application.

6. We have considered submissions advanced on behalf of learned Advocates appearing for respective parties. We have minutely gone through the contents of the FIR and material in the charge-sheet. Admittedly, the applicants are owners of respective lands. However, use of such lands is subject to section 48 of Maharashtra Land Revenue Code, which provides government title to mines and minerals. *Prima facie*, there are documents to indicate that applicants had participated in the scheme introduced by the State of Maharashtra that promotes and aids construction of farming ponds in the fields. They were expected to construct farming ponds of size prescribed in the scheme. The document suggests that all the applicants availed benefit for construction of farming pond admeasuring 900 sq. mtr. (30 mtr. x 30 mtr. x 3 mtr.). The expected excavation of 2196 cubic meter has been

prescribed for pond size. The documentary evidence on record suggests that royalty amount was paid by a contractor engaged in construction of highway. He was permitted excavation of only 500 brass of earth material in Gut No.136. The some of the applicants executed consent deed in favour of road contractor for excavation of minor minerals required for construction of Ahmednagar-Vasunda Phata Road. The statement of witnesses in the charge-sheet depict that on inspection of land, huge excavation of minor mineral was noticed in applicants lands. For brevity and convenience, it can be referred in following chart:

Sr. No.	Gut Nos.	Names of Owners of lands	Measurement of excavation in brass
1	588	Babu Ananda Gunjal	604
2	136	Sanjay Dhamane	9072
3	136	Popat Dhamane and Dnyandeo Dhamane	11,016
4	329	Vishal Dhamane and Pramod Dhamane	47,154
TOTAL			67,846

7. The aforesaid chart would depicts that about 67,846 brass earth material has been removed from the fields of applicants. If the applicants were permitted to construct farming pond admeasuring 900 sq. mtr. (30 mtr. x 30 mtr. x 3 mtr.) approximately 2196 cubic meter of earth material could have been excavated. However, inspection by Revenue Authorities depicts that huge excavation has been done as compare to the probable excavation required for construction of farming pond. Therefore, *prima facie* defence put forth on behalf of applicants that excavation was made in pursuance of construction of farming pond appears to be absolutely incorrect. Further, material in the charge-sheet clearly depicts that some applicants had consented contractor to excavate earth material, which has been used for construction of Highway. *Prima facie*, applicants have involved in commercial activities and gained profit from unauthorized sale of minor

minerals. In that view of the matter, we find that, *prima facie*, there is triable material against the applicants. Hence no case is made out to invoke inherent powers of this Court to accede with the prayers in the application.

8. Hence, application stands rejected. We make it clear that observations made herein above are on, *prima facie*, consideration of the material in the charge-sheet and restricted only for the purpose of disposal of this application.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE