



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (ABA) NO.378 OF 2024

(Arshad Ali Abid Ali Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Raju Kadu, Advocate for the applicant.
Mr. G. Umale, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JUNE 18, 2024.

Heard.

2. By this application, the applicant is seeking pre-arrest bail in connection with Crime No.228/2024 registered with Police Station Tiosa, District Amravati for the offence punishable under Sections 109, 188, 379 read with Section 34 of the Indian Penal Code, Section 9 and 15 of the Environment (Protection) Act, 1986 read with Section 48 of the Maharashtra Land Revenue Code, 1966.

3. Learned Counsel for the applicant submitted that the accusation against the present applicant is on the basis of report lodged by PSI Sagar Ashokrao Hatwar alleging that he got the information that some persons are taking sand from Wardha river Kshar Ghat and accordingly he along with the other officers visited the spot and found that some persons were excavating the sand when they were not having any permit to excavate the same. During the inspection of the said spot, it reveals

that four persons were there along with the vehicles namely Sunil Ramdasji Ghogare, Mangesh Pundalikrao Barde, Piru Mohd. Janiwale and Rama Mahadev Choudhari. On interrogation with them they have disclosed the name of the present applicant. Therefore, present applicant was contacted but he has neither produced any documents nor he appeared before the investigating agency. Thereafter the investigating agency has communicated with the Talathi and other officers of the revenue and it revealed that Kshar ghat from which the excavation was carried out was not auctioned at all. It further revealed to them that sand ghat which was auctioned to the present applicant was Survey No.2 and 4 of Tiosa and not the present spot i.e. Survey No.7 (Gat No.7). Thus, the applicant with the help of his employees has carried out the excavation illegally when he was not having permit for excavating the same. On the basis of said report, police have registered the crime against the present applicant and the other co-accused.

4. Learned APP strongly opposed the application on the ground that though Survey No.7 was not allotted to the present applicant for the excavation and he was allotted with the other sand ghat but unauthorisedly and illegally he has excavated the said sand ghat with the help of his employees and huge amount of sand was excavated worth of Rs.1,72,90,000/- along with the vehicles. On the basis of said report, police have registered the crime against the present applicant and the other co-accused.

5. Learned APP further submitted that as far as the custodial interrogation of the present applicant is concerned which is required as though he was informed and called by the investigating agency he has not cooperated with the investigating agency and not appeared and not produced the relevant documents. In view of that, the application deserves to be rejected.

6. I have heard learned Counsel for both the parties and perused the recitals of the FIR from which it reveals that several vehicles were brought on the spot for excavating the sand. During investigation in all 13 vehicles were found at the spot of incident and 8 to 10 persons were found excavating the sand. On interception by the investigating officer, it reveals that said sand ghat was not at all auctioned for the excavation. On perusal of the record, it further reveals that for the year 2023-2024 the sand ghats which were allotted to the present applicant for the excavation was Survey No.2 and 4 and not Survey No.7. The possession receipt which given to one Gajanan Bhende for whom the present applicant is working shows that Survey Nos.2 and 4 were given for the excavation of sand not Survey No.7. The another possession receipt also shows that Survey No.1, 2, 5 and 9 were allotted for the excavation. Thus, it is relevant from the investigation papers and various statements of the witnesses as well as the documents that this Kshar ghat having Survey No.7 was never auctioned for the excavation of the sand but the present applicant who was

working for said Gajanan Bhende has excavated with the help of other co-accused in a large amount of sand. Considering the *prima facie* material against the present applicant, the *prima facie* case is made out against him. It is pertinent to note that merely because the custodial interrogation is not required is not sufficient to grant anticipatory bail. The investigation papers and the role of the present applicant revealed the *prima facie* case against the present applicant. In view of that, the application deserves to be rejected.

7. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*