

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 1616 OF 2021

Vijay s/o. Yashwant Mahale and others .. Petitioners

Versus

State of Maharashtra .. Respondent

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Advocate for the Applicants : Mr. G. L. Deshpande

APP for Respondent-State : Mr. S. G. Sangale

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CORAM : SANDEEPKUMAR C. MORE, J.

DATE : 31.12.2021

PER COURT :

The applicants are seeking their release on bail in the event of their arrest in connection with Crime No. 180 of 2021 registered with Shindkheda Police Station, Dhule, for the offence punishable under Section 395, 353, 341, 506, 143 of the Indian Penal Code.

2. According to the First Information Report (FIR), the informant on 07-12-2021 at about 12.40 a.m. had received the information about illegal excavation of "*Murum*" at village Rudane. The informant i.e. Upper Tahsildar directed one Talathi to make inquiry in respect of the same. During the said inquiry,

it was found that the persons who were found to be on the spot of the incident, were not having any valid license to excavate such "*Murum*". When two tractors and one JCB machine, which were being used for such excavation, were taken in possession, huge crowd gathered over there. The informant went on the spot at about 6.45. He found the present applicants being owners and drivers of those two tractors there. The trolleys attached to those tractors were also having around 1.25 brass of "*Murum*" each. When the informant asked the applicants to take those tractors and also JCB machine to Shindkheda Police Station for further action, the other co-accused came there and assaulted the informant. The crowd also took away those two tractors and JCB machine from the spot of the incident without permission of the informant.

3. The learned counsel for the applicants submits that the applicants are only respective owners and drivers of the tractors and they were in fact taking *Murum* from their own land. He further submits that there is no overt-act from the side of these applicants. But, the main allegation appears to be against co-accused Shri Govind Dharam Nagrale, who had in fact tried to assault the informant.

4. On the contrary, the learned APP strongly opposed the application by placing reliance on the investigation papers and submitted that, the applicants were taking *Murum* by carrying out excavation from the land of third person i.e. one Hirabai Sakharam Choudhari. Moreover, there was no license issued by the concerned authorities in favour of the present applicants.

5. Heard rival submission of both the parties and also perused the documents and investigation papers.

6. Admittedly, the present applicants are respective owners and drivers of the two tractors, found on the spot containing 125 Brass *Murum each*. Further, the investigation papers also indicate that the said illegal excavation was going on in the land not owned by the applicants, but, in the land owned by Hirabai Sakharam Choudhari, who had stated before the Investigating officer that certain persons, without obtaining any license from the concerned authorities or any permission from her used to excavate *Murum* from her field illegally and without paying any amount to her. Further, the applicants were not having any valid license of the concerned authorities to excavate the *Murum* from the spot of incident.

7. Moreover, there was attempt of assaulting the informant at the hands of one of the co-accused and the crowd gathered at the spot of incident had also illegally taken away those two tractors and JCB machine from the custody of the informant. Under such circumstances, the custodial interrogation of the applicants is needed to verify the facts which are to be investigated. Therefore, I am not inclined to grant any pre-arrest bail to the present applicants.

8. Hence, the following order :-

ORDER

The application for anticipatory bail is hereby rejected.

**(SANDEEPKUMAR C. MORE)
JUDGE**

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