

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
ANTICIPATORY BAIL APPLICATION NO. 586 OF 2023**

**REKHA W/O. PRAKASH PAIKRAO
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

**WITH
ANTICIPATORY BAIL APPLICATION NO. 532 OF 2023**

**KAILASH VAIJANATH WAGHMARE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

**WITH
ANTICIPATORY BAIL APPLICATION NO. 534 OF 2023**

**BHARAT BABAJI KHADSE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

**WITH
ANTICIPATORY BAIL APPLICATION NO. 542 OF 2023**

**GANAJI MUKINDA BELE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

**WITH
ANTICIPATORY BAIL APPLICATION NO. 543 OF 2023**

**GAJANAN SAMBHAJIRAO SHINDE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

**WITH
ANTICIPATORY BAIL APPLICATION NO. 545 OF 2023**

**IMRANKHAN S/O NASEEMKHAN PATHAN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

WITH

ANTICIPATORY BAIL APPLICATION NO. 588 OF 2023

**ANUSAYABAI W/O AMBADAS GADE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

WITH
ANTICIPATORY BAIL APPLICATION NO. 611 OF 2023

**GOPAL BADRINARAYAN TAPDIYA
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

WITH
ANTICIPATORY BAIL APPLICATION NO. 766 OF 2023

**PRALHAD S/O RAGHOJI GARAD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. D. M. Shinde, Advocate for the applicant in ABA Nos. 586/2023, 532/2023, 534/2023, 543/2023, 545/2023, 588/2023

Mr. S. S. Rathi, Advocate for the applicant in ABA No. 542/2023

Mr. A. K. Bhosle, Advocate for the applicant in ABA No. 611/2023

Mr. S. G. Jadhavar, Advocate for the applicant in ABA No. 766/2023

Mr. S. P. Sonpawale, APP for the respondent-State

CORAM : R. M. JOSHI, J.

RESERVED ON : 14/06/2023

PRONOUNCED ON : 21/06/2023

P.C. :-

1. These applications are arising out of crime No. 258 of 2023 registered with Hingoli City Police Station, Dist. Hingoli for the offences punishable under Sections 409, 420 read with Section 34 of the Indian Penal Code. By consent of both sides, these applications are heard and decided together.

2. First information report came to be lodged by Tahsildar,

Hingoli stating that the Collector, Hingoli had formed an inspection committee in order to ascertain whether from January, 2019 to July, 2019 there are irregularities caused in the Distribution of fair grains from the government godown. The said committee was headed by the then Sub Divisional Officer, Hingoli. The Committee submitted its report on 23/09/2020 to the Collector, Hingoli wherein it is stated that during the tenure of Gajanan Shinde, S. G. Khokale, Kailas Waghmare, S. G. Sarate, Imran Pathan and B. B. Khadse irregularities were found in 141 fair price shops and liability was fixed on them. These persons were called upon to deposit the amount of excess lifting of quota of food grains as per market value. Out of 141 Fair Price Shop Owners 115 shop owners deposited the amount. 5 owners challenged the said action before this Court wherein prohibiting order was passed taking action against them. The remaining 16 shop owners have not deposited the amount. On these amongst others allegations crime came to be registered against present applicants.

3. Applicant in Anticipatory Bail Application No. 532/2023, 534/2023, 543/2023 and 545/2023 are the government employees i.e. Tahsildar i.e. Gajanan Shinde, Nayab Tahsildar and others are Awal Karkun working in the Tahsil Office, Hingoli. Other applicants are the Fair Price Shop Owners.

4. Learned counsels appearing on behalf of the Tahsildar and others and Awal karkun submitted that from bare perusal of the first information report it is clear that there is no allegation of commission of any misappropriation by any one and only irregularities are pointed out. It is submitted that alleged loss has already been recovered as more than 90% shop owners have deposited the market value of the said grains. It is further submitted that the report of the inquiry shows that it was the responsibility of the Nayab Tahsildar (now deceased) to issue the orders for drawing the grains from warehouse. As far as Tahsildar is concerned it is his responsibility to issue permit and that he is not expected to oversee further action taken. As regards Awal karkun are concerned it is argued that they are not responsible for either issuance of permit or order for withdraw of grains and they are bound by the orders of the superiors. It is further submitted that since all documents pertaining to the alleged crime are part of the official record, the custodial interrogation of these applicants is not necessary.

5. As far as the shop owners are concerned, their counsels submitted that from the FIR it is revealed that merely because some of the shop owners have not deposited the amount as per show cause notice, crime came to be lodged. They further submitted that had it been a case that all shop owners had deposited the amount in respect of the food grains distributed in excess, there would not have been registration

of any crime. As far the applicant Anusayabai Gade in Anticipatory Bail Application No. 588 of 2023 it is submitted that there is report of inquiry which indicate that there was no complaint of the beneficiaries and that the difference in the stock and the sale was not substantiate. It is submitted that these shop owners have already deposited the amount allegedly due from them and hence it is a fit case to protect their liberty.

6. Learned APP opposed the said submission by pointing out that these are documents on record which indicate that excess food grains were dispatched from the godown beyond permit issued by Tahsildar and therefore, there is *prima facie* evidence showing involvement of government servants as well as Fair Price Shop Owners in this crime. It is submitted that Fair Price Shop Owners are not permitted to transfer the food grains allotted in one scheme to another. By referring to the documents collected during the investigation it is submitted that *prima facie* case is made out against applicants showing their involvement in this crime. Thus, according to him it is not a fit case for grant of anticipatory bail.

7. Perusal of the first information report indicates that same is lodged on the basis of an inquiry conducted with regard to the distribution of food grains for the period from January, 2019 to July, 2019. Even in the said inquiry it was found that there were irregularities

in the allotment and distribution of the food grains. Perusal of the said report indicates that at all point of time there was no excess distribution but on equal number of occasion there was less distribution than permit. This indicates that there is no consistency in the allocation of food grains and its distribution as compared to the permit issued by the concerned authority. The report further indicates that Nayab Tahsildar (supply) (now deceased) seems to have issued excess food grains than the permit. As far as Gajanan Shinde, Tahsildar and other government servants who are employed as Awal karkuns the allegations against them are that the Tahsildar ignored the irregularities and that others are responsible for excess distribution. In the said report there is nothing to indicate that any misappropriation has been done by these applicants.

8. As far as the Fair Price Shop Owners are concerned. In case of Anusayabai in Anticipatory Bail Application No. 588/2023 the report placed on record clearly indicates that there was no complaint of any beneficiaries against her and that if further indicated about minor discrepancies in the stock and distribution record. It is further pertinent to note that these Fair Price Shop Owners were called upon to deposit the market value of the said food grains and accordingly present applicants have deposited the amount. Thus, nothing is to be recovered from them.

9. There is also allegation that Fair Price Shop Owners were required to sale food grains online on POS machine to ensure that the food grains are received by the concerned beneficiaries only. It is a contention of the counsel for these applicants that the said method of online distribution was introduced in the year 2019 only and there were glitches in the said system and which compelled the Fair Price Shop Owners who sale the food grains offline. Merely because the food grains are not sold online, it does not become an offence, particularly in view of the fact there are no complaints against them from the beneficiaries.

10. Considering the nature of offence and in view of the fact that the documents concerning to the offences are available with the concerned department, custodial interrogation of the present applicants is not necessary. In the circumstances, applications deserve to be allowed in terms of interim order dated 19th April, 2023.

11. It is clarified that observations made herein above are on *prima facie* consideration of record and Trial Court is not bound by same.

(R. M. JOSHI, J.)

ssp