

**IN THE HIGH COURT AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD**

CRI.APPLN/6594/2014

SURENDRA LAXMICHAND LODAYA (JAIN) AND ANOTHER  
V/S  
THE STATE OF MAHARASHTRA

Mr. Satyajit Bora, Advocate for applicant.  
Mr. R.P. Phatke, APP for State.

WITH  
CRI.APPLN/6672/2014

MANOHAR S/O SHANKAR CHAUDHARI  
V/S  
THE STATE OF MAHARASHTRA AND ANOTHER

Shri. Rajendra S. Deshmukh, Advocate for applicant.  
Mr. R.P. Phatke, APP for State.

WITH  
CRI.APPLN/6881/2014

KAUTIK S/O RAMDAS PATIL  
V/S  
THE STATE OF MAHARASHTRA

Mr. B.R. Warma, Advocate for applicant.  
Mr. R.P. Phatke, APP for State.

WITH  
CRI.APPLN/6631/2014

BABAN S/O BABURAO BAIRAGI AND ANOTHER  
V/S  
THE STATE OF MAHARASHTRA

Mr. R.S. Shinde h/f. Mr. N.L. Choudhari, Advocate for  
applicants.  
Mr. R.P. Phatke, APP for State.

WITH  
CRI.APPLN/6724/2014

MR PARES SHAKARLAL HAMLAI AND ANOTHER  
V/S  
THE STATE OF MAHARASHTRA

Mr. S.S. Sharma and Mr. P.B. Soble, Advocate for  
applicants.  
Mr. R.P. Phatke, APP for State.

WITH  
CRI. APPLN/6780/2014

HARMOHANSINGH JAGATSINGH NAGPAL AND ANOTHER  
V/S  
THE STATE OF MAHARASHTRA

Mr. Satyajit Bora, Advocate for applicant.  
Mr. R.P. Phatke, APP for State.

WITH  
CRI. APPLN/6713/2014

SUSHIL MAHENDRA SANCHETI AND ANOTHER  
V/S  
THE STATE OF MAHARASHTRA

Mr. Satyajit Bora, Advocate for applicant.  
Mr. R.P. Phatke, APP for State.

**CORAM : T.V. NALAWADE, J.**  
**DATED : 13th January, 2015.**

**ORDER :**

1) All the applications are filed for relief of anticipatory  
bail. Both the sides are heard.

2) Criminal Application No. 6594/2014 is filed in C.R.  
No. 382/2014 registered in Chalisgaon Police Station for the  
offences punishable under sections 420, 272, 273 etc. of Indian  
Penal Code and sections 3 (1) (zz) (v), 26 (1), 26 (2) (i), 27 (i), 27  
(2) (c), 59 (3), 59 (1), (3), 63 of the Food Safety and Standards  
Act, 2006 (hereinafter referred to as 'the Act' for short). The

crime is registered on the basis of report given by one Food Safety Officer. Applicant No. 1 Surendra Laxmichand Lodaya (Jain) is vendor and his brother Ajit Laxmichand Lodaya (Jain) is owner of Apeksha Diary situated at Chalisgaon, District Jalgaon. On 18.11.2014, he paid visit to the aforesaid diary. Surendra was present in the diary and he was conducting the business. The licence was standing in the name of Ajit. 2500 ltrs. of mixed milk was found to be kept for sale in the diary and it was stored in one insulated tank. After following procedure, samples were collected from this tank on 18.11.2014 itself. One of the samples was sent to Food Analyst. Report of Food Analyst was received on 24.11.2014. Food Analyst reported that in the milk fat was less. Further, sugar was found to be added in milk. Food Analyst also reported that it was unsafe for human consumption. On the basis of this report of Food Analyst, Assistant Commissioner appointed under the Act, gave order to launch prosecution and F.I.R. came to be given to police by Food Safety Officer for aforesaid offences. The milk fat was 3.2% as against required minimum 4.5% and sugar test was positive and formaline test was also positive.

3) Criminal Application No. 6881/2014 is filed by one Kautik s/o. Ramdas Patil in C.R. No. 247/2014 registered in Parola

Police Station, District Jalgaon for similar offences on the basis of report given by Food Safety Officer. He had visited Shital Diary of Dhule road, Parola with other officers. One Deelip Patil was found in the diary and he was conducting the business. The licence of the diary was in the name of Kautik Ramdas Patil. In storage tank of the diary, standard pasteurized milk was found and it was for sale. Samples were collected from this storage tank and one sample was sent to Food Analyst on 18.11.2014 itself. Report of Food Analyst was received on 24.11.2014 which is to the effect that sugar was found to be added in the milk. On the basis of directions given by Assistant Commissioner, appointed under the Act, report was given and crime came to be registered against Kautik Patil.

4) Criminal Application No. 6631/2014 is filed in C.R. No. 380/2014 registered in Chalisgaon Police Station for similar offences on the basis of report given by Food Safety Officer. He visited Mangalmurti Diary situated in Chalisgaon on 18.11.2014. One Babudas Haridas Bairagi was present in the diary for conducting the business (applicant No. 1). One Devidas Ganpat Chouthawe had obtained licence for this business (applicant No. 2). They found that standardized milk was kept for sale in a can of 40 ltrs. From that can, samples were collected on the same

day and one sample was sent to Food Analyst. Report of Food Analyst was received on 24.11.2014 and the Food Analyst reported that sugar was found to be added in the milk.

5) Criminal Application No. 6724/2014 is filed in C.R. No. 381/2014 registered in Chalisgaon Police Station for similar offences on the basis of report given by Food Safety Officer. He paid visit to Mamta Diary from Chalisgaon on 18.11.2014. He found that one Surendra Laxmichand Jain was present in the diary for conducting the business and the licence was standing in the names of Paresh Shankarlal Hamlai and Sanjay Vasant Joshi. Milk was found to be stored in cans of 40 ltrs. for sale and it was mixed milk. Samples of this milk were collected as they were kept for sale on the same day and one of the samples was sent to Food Analyst. Food Analyst gave report on 24.11.2014 to the effect that sugar was added in the milk and it was not safe for human consumption.

6) Criminal Application No. 6780/2014 is filed in C.R. No. 383/2014 registered in Chalisgaon Police Station for similar offices on the basis of report given by another Food Safety Officer. He had visited Darshan Diary on 18.11.2014. He found that one Digambar Laxman Var was conducting the business and

the licence was standing in the name of Harmohansingh Jagatsingh Nagpal (both applicants). The Food Safety Officer found that in one insulated tank, 3000 ltrs. of mixed milk was kept for sale. Samples were collected from this stored milk. On the same day, one of the sample was sent to Food Analyst. Food Analyst gave report on 24.11.2014 to the effect that sugar was found to be added in the milk and it was not safe for human consumption.

7) Criminal Application No. 6713/2014 is filed in C.R. No. 211/2014 registered in Pachora Police Station for similar offences on the basis of report given by Food Safety Officer. He visited Sushil Diary of Pachora on 18.11.2014. One Sushil Mahendrachand Sancheti was conducting the business and the licence was obtained in the name of Sachin Mahendrachand Sancheti (both are real brothers and applicants). Buffalo milk was found to be stored for sale. Sample was collected and it was sent to Food Analyst. On 24.11.2014 Food Analyst gave report that sugar and skimmed milk powder was added in the milk and it was unsafe for human consumption.

8) Criminal Application No. 6672/2014 is filed in C.R. No. 150/2014 registered in Bhadgaon Police Station for similar

offences. F.I.R. is given by Food Safety Officer. He had visited Samarth Diary of Bhadgaon on 18.11.2014. Manohar Shankar Choudhary, applicant, was present in the diary for conducting the business. It was noticed that there was no licence in the diary as no licence was produced for doing the business. Milk was found to be stored in cans for sale. It was buffalo milk. Samples were collected on the same day and one sample was sent to Food Analyst. On 24.11.2014 Food Analyst gave report that the quantity of milk fat was less than the minimum required quantity. The report further showed that sugar and skimmed milk powder were added in the milk. The affidavit of the applicant shows that initially the licence was obtained for the period from 2009 to 2013 and the proceeding was pending for renewal of licence and it came to be renewed on 5.12.2014.

9) The learned counsels for all the applicants in respective applications made various kinds of submissions which are as under :-

A) The applicants/accused have right to challenge the report of Food Analyst under the Act and unless and until, the appeal is decided, the report, if any, is received from referral laboratory, the police cannot register the crime and so, the applicants are

entitled to get the relief of anticipatory bail.

B) There is no case of causing injury to anybody and so, the provisions of sections 59 (ii) to (iv) cannot be used and so, the applicants are entitled to anticipatory bail.

C) The use of provision of section 420 of I.P.C. is not possible as there are specific provisions under the Act for punishment in respect of the contravention, if any, found and so the applicants are entitled for anticipatory bail.

D) There is no question of making investigation by police in view of the specific provisions of the Act and the prosecution needs to be launched directly in the Court and on this ground, the applicants are entitled for relief of anticipatory bail.

10) This Court has carefully gone through the scheme of the Act for considering the contention (A) raised by the learned counsels for the applicants in the present proceedings. The provision of section 42 gives procedure for launching the

prosecution. This procedure is for the officers appointed under the Act like Food Safety Officer, Designated Officer and Commissioner of Food Safety. Even in this provision, there is no mention of referral laboratory. This provision shows that after receipt of the report of Food Analyst, the procedure laid down in section 42 needs to be followed and decision needs to be taken regarding launching of the prosecution. Thus, there is no reference of referral laboratory and this section is independent of the provision of section in which there is reference of referral laboratory. In provision of section 41, the power of Food Safety Officer is mentioned in respect of search, seizure, if there is reasonable doubt about the adulteration or involvement in commission of offence. The provision of section 47 shows that when a Food Safety Officer takes sample of food article for analysis, he is expected to prepare four samples. The first sample is required to be sent to Food Analyst. Two samples are required to be sent to Designated Officer for keeping them in his custody and remaining sample can be sent to accredited laboratory, if so requested by the food business operator (accused). Proviso of section 47 (1) of the Act shows that if the test reports received in respect of the first sample and fourth sample are found to be at variance, then the Designated Officer is expected to send one part of the sample kept in his custody to

referral laboratory for analysis whose decision thereon shall be final. There is similar rule made under the Act. These provisions show that right is given to a person conducting the business or the person who owns the business to send the 4th sample to laboratory, but that right needs to be exercised immediately, on the date of seizure. This is only the absolute right given to the owner or person conducting the business. It appears that in all the present cases no such right was exercised.

11) In section 46 (4), appeal is provided against the report of Food Analyst and it lies before the Designated Officer. It runs as under :-

**"46. Functions of Food Analyst.- (1).....**

(4) An appeal against the report of Food Analyst shall lie before the Designated Officer who shall, if he so decides, refer the matter to the referral food laboratory as notified by the Food Authority for opinion"

Thus, there is right to appeal, but it is up to the Designated Officer to decide as to whether the matter needs to be referred to referral laboratory. The provision of section 42 (3) shows that even after receipt of the report from Food Analyst, the Designated Officer is expected to decide as to whether there is contravention and whether the matter needs to be referred to

Commissioner for sanctioning the prosecution. It can be said that in the appeal, hearing can be given. But, it is up to the Designated Officer to take decision in that regard. Thus, the provision of section 46 (4) does not give any absolute right to the accused to send one more sample and this time to referral laboratory, if appeal is filed by him. This Court has already observed that in section 42, there is no reference of referral laboratory and so, the proposition that unless appeal is decided, report cannot be given to police or prosecution cannot be launched is not acceptable. It needs to be presumed that the Designated Officer has considered the report of Food Analyst and on his recommendation, sanction is given.

12) In respect of contention (B) that there is no case of causing injury to anybody, it can be said that the relevant provisions need to be seen to ascertain as to whether the Food Article was found to be unsafe for consumption. Section 59 provides for punishment in respect of such unsafe food article. It is now the matter of investigation in the present cases and the stage of conviction comes only after the investigation is completed and evidence is given. At this stage, there is report of Food Analyst that it is unsafe for human consumption. Further, in that case and if only provision of section 59 (i) is used, the

applications itself will not be tenable as that offence can be treated as bailable offence. In any case, there is one more section like section 420 of I.P.C. for which the crime is registered and so, this contention also cannot be considered at this stage.

13) In respect of contention (C) that the use of provision of section 420 of I.P.C. is not possible, cannot be considered atleast at this stage. The learned APP placed reliance on the case reported as **2006 (1) Mh.L.J. (Cri.) 328 Division Bench of this Court [Rajiv Kumar Gupta and Ors. Vs. State of Maharashtra]**. In that case, there was allegation that 'Pan Masala' containing magnesium carbonate was sold when there was positive declaration, representation to the people at large that 'Pan Masala' does not contain magnesium carbonate. This Court refused to quash the F.I.R. by holding that it is difficult to accept the proposition that section 420 of I.P.C. cannot be used as the matter also falls under the provisions of Food Adulteration Act, 1954. In the present case also, it can be said that when the accused were selling or intending to sell the milk, the milk needs to be as per the standards prescribed under the Act and the Rules. If they are selling something which contains sugar and which contains skimmed milk powder, it is nothing but attempt to deceive/deceit. So, this contention is also not acceptable.

14) In respect of contention (D), the procedure for launching the prosecution, the relevant provisions are sections 40, 59, 69. From the scheme of the Act, it can be said that even a purchaser is given right to have food analysed. After using section 40 by the purchaser, a copy of the report goes to officer appointed under the Act and the officers are required to take action as provided in aforesaid provisions of the Act. That does not mean that the purchaser is prevented from taking independent action. There is no such positive prohibition in the Act and so, the general provisions of Criminal Procedure Code are applicable in this regard. Further, in the scheme of the Act, there is no specific and positive provision that only after report given by Food Safety Officer and after sanction given under section 42, the cognizance of the matter can be taken by the Criminal Court. It can be said that the provisions are made to ensure that even if a private person, purchaser has a grievance and the procedure as given in section 40 is followed and the report is received from Food Analyst by the Officers, they are expected to take action. The Court is also not prevented from taking cognizance of the offence. In any case, when somebody approaches police by making allegation that some cognizable offence is committed, police also can investigate that case

unless there is specific prohibition in that regard. In the Act, there is no such prohibition. It can be said that in section 42, the procedure for launching prosecution for the offence is given and that is in relation to their duties. That provision has not created prohibition against police or purchaser.

15) Some argument was advanced regarding absence of some applicants, owners, on the spot when the sample was collected. This submission is also cannot be considered at this stage as there is nothing in the Act to say that only the persons who are actually conducting the business can be prosecuted or action can be taken only against that person.

16) Reliance was placed by the learned counsels for the applicants on some reported cases like **1982 (I) Prevention of Food Adulteration Cases 106 Delhi High Court [Municipal Corporation of Delhi Vs. Sunder Dass]**. It is in respect of the addition of sugar. The facts were totally different and it is in respect of old Act and the Rules made under the Prevention of Food Adulteration Act. Reliance was placed on **2009 (2) FAC 346 Allahabad High Court [Asif Vs. State of U.P.]**. In that case the High Court observed that sample was not taken by Food Inspector and so, the prosecution under I.P.C. was apparently not

tenable. It was again relating to the provisions of Prevention of Food Adulteration Act, 1954. This Court is avoiding to discuss the provisions of Prevention of Food Adulteration Act as there was also provision enabling the aggrieved party or social organization to take such action. In the case reported as **2007 FAJ 207 Patna High Court [Satish Mishra Vs. State of Bihar and Ors.]**. It was observed that the action taken by police was not proper when separate machinery was created under Prevention of Food Adulteration Act and the proceeding was quashed. In the case decided by Apex Court, reported as **(2009) 7 SCC 495 [Devendra and Ors. Vs. State of U.P. and Anr.]**, the ingredients of provisions of section 415, 420 etc. of I.P.C. are discussed. The facts and circumstances of each and every case are always different. There cannot be dispute over the propositions made by the Apex Court in the aforesaid case. The reliance was placed on the case reported as **2011 (2) Crimes 250 [M/s. Pepsico India Holdings (Pvt) Ltd. and Anr. Vs. State of U.P. and Ors.]**. In this case, the High Court considered the use of provisions of sections 272 and 273 of I.P.C. when there were provisions like present Act. One Government order issued by the State Government directing the police to initiate action under sections 272, 273 of I.P.C. was set aside by the High Court. It is true that sections 89 and 97 of the Act can be used for that

purpose. This Court has already referred the case of **Rajiv Kumar** cited supra decided by the Division Bench of this Court for use of section 420 of I.P.C. and so, this point needs no more discussion. One more case reported as **1953 AIR (SC) 293 [Basirul Huq Vs. State of West Bengal]** was cited. It is altogether on different point and so, no discussion is warranted.

17) In view of the discussion made above, this Court holds that thorough investigation is required in the matters. Instances of adulterating milk are increasing day by day. The learned Judge of the Trial Court has rightly observed that only to make more money, the businessmen in this industry are using substances which can cause harm to infants, sick persons and such activities cannot be taken lightly and no lenient view can be taken in their favour.

18) In the result, applications stand rejected. Interim relief, if granted in favour of some of the applicants, stands vacated.

19) Learned counsel Shri. Warma for the applicant, after declaration of the result of the application submitted that the relief of anticipatory bail was claimed on health ground. He

requested for continuation of the interim relief for some days to challenge the order of this Court. It is a case of food adulteration and in such cases relief of anticipatory bail is not expected to be granted. The request is rejected.

**[ T.V. NALAWADE, J. ]**

ssc/