

SSK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 658 OF 2015**

Ravindra H. Dubey	Petitioner
versus	
The State of Maharashtra and ors.	Respondents

Mr. P. A. Pol i/b. Pol Legal Juris, advocates for the petitioner.
Mrs. M. M. Deshmukh, APP for the State.

**CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.**

DATED : 9th April, 2015.

P.C.:

Heard Mr. Pol, learned counsel for the petitioner and Mrs. Deshmukh, learned APP for the State.

2. By this petition under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973, the petitioner is seeking direction to release his tanker bearing No.MH-14-CP-7801 along with the furnace oil contained therein. The petitioner is also seeking to quash and set-aside the orders dated 21st May, 2013 and 31st January, 2015 passed by the Collector of Raigad and Judicial Magistrate, F.C., Panvel.

3. It is submitted that the tanker bearing No. MH-14-CP-7801

containing furnace oil was detained under Essential Commodities Act, 1955 and subsequently by the order dated 21st May, 2013, it came to be seized with further direction to auction the furnace oil contained therein on the premise that the furnace oil is an essential commodity. Thereafter petitioner's application for release of the tanker was dismissed by the Judicial Magistrate, F.C.Panvel by order dated 31st January, 2015 on the ground that furnace oil contained in the said tanker is yet to be auctioned.

4. Learned counsel for the petitioner submitted that the furnace oil is not an essential commodity within the meaning of Maharashtra Solvent, Raffinate and Slop (Licensing) Order 2007, This submission is not disputed by learned APP. In fact, the notification dated 24th January, 2011 issued by the Deputy Secretary of the Government of Maharashtra was placed before us, which also corroborates the contention of the petitioner that furnace oil is not an essential commodity within the meaning of the said Order of 2007. The petitioner is also not an accused in crime No.II/05/2012 registered at Rasayani Police Station.

5. Be that as it may, the Apex Court in the case of **Sunderbhai Ambalal Desai versus State of Gujarat , AIR 2003 SC 638(1)** held that seized goods including vehicle cannot be kept indefinitely in the custody of police station. The said tanker is detained by Rasayani Police Station in the year 2012, and till date, it is lying with the police station. Since

last two years, no action has been taken either to verify whether the contents contained in the said tanker is furnace oil or any other petroleum product. If that be so, the order of the Collector dated 21st May, 2013 cannot be sustained in regard to the tanker which is the subject matter of the present petition. In the circumstances, we have no alternative but to allow the petition. The petition is, accordingly, allowed in terms of prayer clauses (a) and (b) and is disposed of as such.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)