

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1648 OF 2015

Pravin Sidram Madikhambe .Applicant

v/s.

The State of Maharashtra .Respondent

Mr.K.S.Patil i/b. Mr.D.K.Girme, Advocate, for
the Applicant

Mrs.P.P.Shinde, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 29.10.2015

P.C.

. Heard learned counsel for the applicant
and the learned APP for the respondent – State.

2. By this application, the applicant
seeks pre-arrest bail in connection with
C.R.No.367 of 2015 registered with the Loni
Kalbhor Police Station, Pune(Rural), for the
alleged offences punishable under Sections 285,
379 r/w.34 of the Indian Penal Code and under
Sections 3 & 7 of the Essential Commodities Act.

3. The incident has taken place on 03.10.2015. One Isaque Ismail Machkuri was found committing theft of diesel and petrol from various tankers. According to the complainant, diesel worth Rs.66,125/- was stolen from the said vehicle. Pursuant to the same, a complaint was lodged by the Tahsildar, Mr.Dagdu Sukhdeo Kumbhar, Taluka – Haveli, District – Pune. He has stated that on 03.10.2015 at about 1.00 p.m. he was informed by Nilima Dhaygude, the Deputy Collector, Pune that they had conducted a raid, near Kavdipat toll naka and a person committing theft of diesel/petrol/kerosene was apprehended. Pursuant to the same, the complainant went to the said spot. According to the complainant, the driver of the vehicle informed that in village Kavdipat, there was a piece of empty land, being Gat No.920, which was being used for transferring the said diesel/petrol/kerosene from one vehicle to another. He has stated that

he was an employee of the present applicant, at whose behest this was done.

4. Learned counsel for the applicant has vehemently contended that the applicant was not present at the spot when the alleged offences were committed. He submitted that in fact, no theft was committed of diesel/petrol/kerosene. According to him, the applicant is neither the owner of the land nor the owner of the shed where diesel/petrol/kerosene was being transferred from one vehicle to another. He submits that in fact, the quantity mentioned in the FIR shows that there was no short fall and in fact there was excess quantity.

5. Learned APP opposes the bail application. She submits that the driver, who was apprehended was an employee of the present applicant and it is at his instance that theft

of diesel/petrol/kerosene was being committed. She submitted that a perusal of the complaint shows that co-accused Isaque Machkuri was working for the present applicant and that he has named the applicant. She submits that the co-accused Isaque Ismail Machkuri has disclosed that they were committing theft of diesel/petrol/kerosene from the vehicle and selling it at lesser price in the market. She submits that there is a statement of one witness, who is running a nursery near the spot, where the diesel/petrol/kerosene would be transferred. The said witness has clearly stated that on several occasions he had seen the owners and drivers committing theft of diesel/petrol/kerosene. He has named the present applicant in his statement stating that he was one of the persons who was involved in transferring of diesel/petrol/kerosene. He has stated that this activity was going on for long.

6. Perused the papers, including the statements recorded by the police so far. The name of the applicant is not only disclosed in the FIR, by the person who was apprehended on the spot but is also in other statements. The statement of the witness as referred to above clearly shows that the applicant was involved with other tanker owners in committing theft of diesel/petrol/kerosene from the vehicle and that the applicant was involved illegally selling the same. The activity of theft/siphoning of diesel/petrol/kerosene from vehicles is on the rise.

7. Considering the nature of allegations as against the applicant, this is not a fit case to exercise the discretionary power under Section 438 of the Code of Criminal Procedure. Custody of the applicant is required to see how many persons are involved in the said racket.

8. The Application stands rejected.

It is made clear that the observations made herein are *prima facie* and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(REVATI MOHITE DERE, J.)