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

CRIMINAL APPLICATION NO. 1863 OF 2016

Prashant s/o Panditrao Pande ..APPLICANT

VERSUS

1. The State of Maharashtra,
Through Police Station Officer,
Basmath (Rural) Police Station,
Basmath, Tq. Basmath,
District Hingoli
2. The Superintendent of Police,
Hingoli ..RESPONDENTS

Mr Amit A. Mukhedakar, Advocate for applicant;
Ms R.P. Gaur, Addl. Public Prosecutor for respondents

CORAM : N.W. SAMBRE, J.

DATE : 4th April, 2016

ORAL ORDER :

This is successive application under section 438 of the Code of Criminal Procedure by the applicant for grant of pre-arrest bail, in connection with C.R. No.70 of 2015, registered with Basmath (Rural) police station at Basmath, for offences punishable under sections 3 and 7 of the Essential Commodities Act and under section 462 read with section 34 of the Indian Penal Code.

2. Earlier bail application filed by the applicant, being Criminal Application No.6351 of 2015, was rejected by this Court, by an order dated

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7th January, 2016. While rejecting the said application, this Court had taken into account the provisions of clause 23 and clause 28 of the Fertilizers Control Order, 1985 and upon interpretation thereof, noticed *prima facie* involvement of the applicant in the crime in question.

3. It is subsequent thereto, the applicant has approached the learned Additional Sessions Judge, Vasmat, vide Criminal Application No.43 of 2016, pointing out that there is a subsequent development as he could get a communication dated 18th September, 2015, issued by the Fertilizer Inspector, i.e. the Agriculture Officer, addressed to the Collector, Hingoli, stating that the stock in question which was removed by the present applicant was in the custody of the Collector and was never handed over in the custody of the applicant. Learned Additional Sessions Judge then rejected the application.

4. While trying to make out a case for grant of pre-arrest bail, Mr Mukhedkar, learned Counsel appearing on behalf of the applicant would urge that the Agriculture Officer had informed the Collector, Hingoli that the stock in question was handed over for appropriate disposal/orders in the latter's custody. He would submit that as the stock in question, which is subject-matter of crime, was never handed over in the custody of the applicant, the question of removal of the stock by the applicant from his own custody and selling the same in open market would not arise. According to him, since the said fact was not available on the date of earlier application, the same is sought to be agitated by moving the present

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application.

5. Learned Addl. Public Prosecutor opposed the application on the ground that there are hardly any further developments in the matter, which prompts the applicant to take recourse to second chance before this Court, on the same set of facts. Learned Addl. Public Prosecutor then would submit that more the reason why the application be rejected is the conduct of the applicant as is reflected in the communication dated 18th September, 2015, which depicts his criminal intention/*mens rea*.

6. Having considered rival submissions made on behalf of the parties, in addition to the reasons as are mentioned in the earlier order dated 7th January, 2016, rejecting the application for grant of pre-arrest bail moved by the present applicant, it is to be noted that the Agriculture Officer, who had seized the stock of the fertilizer had rather asked the applicant to take custody of the same, which the applicant had refused and then the Agriculture Officer was required to hand over custody of the same to the Collector. These facts depict that the applicant was well within knowledge that the stock was given in the custody of the Collector and there was no authority with the present applicant to deal with the said stock. Still, the applicant, by overriding the powers of the Collector and Agriculture Officer, without any authority, has removed and disposed of the stock, which resulted into registration of the crime in question.

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7. In view thereof, in my opinion, there is prima facie involvement of the applicant in the crime in question. Thus, Criminal Application stands rejected.

(N.W. SAMBRE, J.)

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