IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1441 OF 2016

Vasant Tatya Pawar .....Applicant

V/s.

The State of Maharashtra ....Respondent

Mr. Pandurang Pol a/w Mr. Ritesh Thobade Advocate for Applicant.
Mr. Vinod Chate APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : SEPTEMBER 21, 2016.

PC :

1) Heard. This is an application under section 438 of the Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 134 of 2016 registered at Kamati police station under the provisions of Essential Commodities Act. Proforma under section 154 of the Code of Criminal Procedure, 1973 shows that applicant is being prosecuted for offence punishable under section 7 of the Essential Commodities Act.

2) It is the case of the prosecution that on 26/07/2016, the first informant i.e. Sunil Kalekar who is officiating as District Supply Officer at Solapur lodged a report at the police station that the office had received a secret

information that the applicant has accumulated huge stock of wheat and rice illegally. That the said stock is in fact meant for distribution under the public distribution system. The first informant had verified the secret information and then along with the Nayab Tahsildar, Senior Clerk, Talathi, Kotwal etc had visited the Godown of the applicant and had found that there are about 27,950 Kg. wheat, 24460 Kg rice and 375 empty Gani bags having the stamp of Food Corporation of India. The goods were seized and thereafter, on 27/07/2016, the first information report was lodged.

3) The learned counsel for the applicant submits that applicant is not having a licence for running fair price shop. Moreover, no licence is required for trading in wheat and rice. Thirdly, that bags which were found in the Godown with a stamp of Food Corporation of India were recycled bags and fourthly that many a times, Food Corporation of India also sells the grains to private traders. It is also submitted that the F.I.R. is lodged under section 7 of the Essential Commodities Act. The learned counsel rightly submitted that unless an offence is attributed under section 3 of the Essential Commodities Act, section 7 would not be applicable as section 7 is a penalizing provision.

4) The learned counsel for the applicant has annexed, along with the

application seeking pre-arrest bail, the receipts showing that he had purchased the said wheat and rice from private traders namely Sanjay Kadbe. The receipt is dated 24/02/2016. R.R. Mendke, the receipt dated 21/03/2016. Sanjay Kadbe, receipt dated 18/04/2016. Shri. Mahalaxmi Traders, receipt dated 16/07/2016 and 20/07/2016. Ghogare Trading Company, receipt dated 16/07/2016. Ranveer Trading Company, receipt dated 11/07/2016 & 14/07/2016. Ashapurvak Traders, receipt dated 04/07/2016. Rajeshwari Rice Mill, receipt dated 15/07/2016 etc.

5) It is pertinent to note that all the receipts are from the month of March 2016. On 19/08/2016, i.e. on the date of preliminary hearing of this application, the learned counsel for the applicant had demonstrated before this Court that the goods which were found in the Godown were purchased from open market and were not meant for public distribution system. On 19/08/2016, this Court had instructed the investigating officer to ascertain the genuineness of the receipts annexed to the present application.

6) Pursuant to the said order, investigating officer has recorded the statements of the traders whose receipts are annexed along with the application. Each of the trader has disclosed that since they knew applicant,

they had issued receipts without supplying the goods. The receipt book of Ashapurvak Traders was seized and it was seen that receipt no. 240 is of 29/07/2016 whereas receipt no. 241 which is annexed along with the application is of 04/07/2016. As far as Ghogare trading company is concerned, it is submitted that one Rahul Gavare had been to the trader and in his own handwriting he has written the receipt dated 16/07/2016 in the name of Sadguru Trading Company i.e. company of the present applicant. Same is the case of all the traders whose receipts are annexed along with the application. Apart from the offence under section 3 of the Essential Commodities Act, it is clear that applicant has fabricated the documents to mislead the Court to show that the goods were purchased from the open market.

7) It is in these circumstances that applicant does not deserve the discretionary relief under section 438 of the Code of Criminal Procedure, 1973. The act of the applicant is affecting the very public distribution system and *prima facie* the submission of the learned APP that the possibility of the applicant indulging into black marketing cannot be brushed aside. Moreover, the district is drought stricken and there is scarcity of food grains. Hence,

applicant does not deserve pre-arrest bail. It is made clear that the observations made herein above are restricted to an application under section 438 of the Code of Criminal Procedure, 1973 and shall not be considered while deciding the application under section 437 or 439 of the Code of Criminal Procedure, 1973.

8) Application, being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)