

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2632 OF 2017

Jaydas Sukur Tare

...Applicant

Versus

The State of Maharashtra

...Respondent

WITH

BAIL APPLICATION NO.2570 OF 2017

Vipul Shantilal Dedhia

...Applicant

Versus

The State of Maharashtra

...Respondent

WITH

BAIL APPLICATION NO.2655 OF 2017

Shivshankar Ramkedar Dubey

...Applicant

Versus

The State of Maharashtra

...Respondent

WITH

CRIMINAL APPLICATION NO.1095 OF 2017

IN

BAIL APPLICATION NO. 2655 OF 2017

Karmraj Ramkedar Dubey

...Applicant

Versus

The State of Maharashtra

...Respondent

WITH

BAIL APPLICATION NO.2657 OF 2017

Sushil Indrabhan Pathak

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.Manoj Harit i/b Sachin Sambre for the applicant in BA No. 2632 of 2017.

Mr.A.P.Mundargi, Sr. Counsel, Niranjan Mundargi, i/b Vikram R.Sutaria for the applicant in B.A No.2570 of 2017
Mr.Sudeep Pasbola i/b Rahul Arote for the applicant in BA No.2655 of 2017

Mr.V.V.Purwant for the applicant in BA No.2657 of 2017

Mr.Karmaraj R.Dubey for the Intervenor in APPP No. 1095 of 2017

Mr.Anil Sing, Additional Solicitor General Ms. A.A. Takalkar, APP for the State in BA No. 2632 of 2017 and BA No. 2570 of 2017

Mr.R.M.Pethe, APP for the State in BA NO.2655 of 2017

Mr.S.V.Gavand, APP for the State in BA No.2657 of 2017

Mr.Ranveer Bayes ,PI , Manpada Police Station

CORAM: A.M. BADAR, J.
DATED: 8th DECEMBER, 2017

PC:-

1. All these bail applications are being decided by common order as all applicants are accused in Crime No. I-353-17 registered with Police Station Manpada for the offences punishable under Sections 265, 267, 420,465, 468, 471,473 r/w 34 of the Indian Penal Code, Section 3(6) of the

Motor Spirit And High Speed Diesel (Regulation And Supply Distribution and Prevention Of Malpractices,) 2005 and under Section 3,7,8,9 of the Essential Commodities Act, 1955.

2. Heard the learned advocate appearing for the applicants as well as the learned Additional Solicitor General of India appearing on behalf of the Respondent/State. The learned Additional Solicitor General of India opposed the application by contending that considering the wide magnitude of the crime in question as well as the fact that further investigation of the crime in question is going on, the applicants be released on temporary bail at this stage so as to decide further course of action after disposal of the Writ Petitions pending before Nagpur Bench of this Court. The learned advocate appearing for the applicants opposed this submission by contending that investigation of the crime in question is ultimately resulted in filing of the charge-sheet against all applicants/accused before the concerned Court and as the offence is neither punishable with death nor with life

imprisonment, applicants are entitled to be released on bail and their further pre-trial detention is not warranted.

3. I have also heard the intervenor appearing in bail application bearing No. 2655 of 2017. He argued that on the basis of Crime No. 252-17, the offence punishable under Sections 467 of the Indian Penal Code was registered at police station at Lucknow. He argued that in Public Interest Litigation No.10652 of 2017 the Division Bench of Hon'ble Allahabad High Court has observed that chain of crime which involves a very large number of persons, different agencies, wings and departments of government is detected and innocent customers of the oil companies in the State are cheated. He further drew my attention to the remand report dated 25.10.2017. It is further argued that in the State of U.P the investigation is done and section 467 of the Indian Penal Code is invoked whereas, in Maharashtra, investigators has not applied said section. He drew my attention to undated

letter addressed to the Sr. Police Superintendent of Police , Lucknow written by the Sub Divisional Officer of Lucknow.

4. I have carefully considered the rival submissions and also perused the charge-sheet. It is seen that the subject crime is challenged by filing several writ petitions before Nagpur Bench of this Court and on 5th December 2017 by common order, the further proceedings arising out of the subject crime are stayed by the Nagpur Bench of this Court. The relevant observations in the order dated 5th December 2017 passed in the Writ Petition Nos. 937 of 2017, 950 of 2017, 952 of 2017, 977 of 2017, 1046 of 2017 and Criminal Application No. (APL No.773 of 2017 reads thus:-

"On the aspect of competency of the Deputy Superintendent of Police to conduct search and seizure in terms of Clause (7) of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005, reliance is placed upon the notification dated 19.06.2006. Shri. Mardikar, the learned Senior Advocate submits that in all the cases it is the Assistant Police Inspector who has conducted the search and seizure. This aspect is required to be gone into

by this Court on merits. Similarly, the impact of Section 51 of the Legal Metrology Act and the provisions of Section 4 of the Code of Criminal Procedure on the competency of the person registering the offences against the petitioners is also required to be gone into in the light of the decision of the Kerla High Court, cited *supra*. The matter is, therefore, required to be considered on merit.

Rule made returnable early.

Learned APP waives service of notice for Respondent-State.

In view of the aforesaid position of law, we would like to modify the order passed by this Court directing the respondents not to take coercive step and to substitute it by an interim order in terms of prayer clause (c) of W.P.No. 937 of 2017, which is reproduced below.

"(c) stay the effect and operation of any proceeding arising out of the Crime No. T-353/2017 of P.S. Manpada, Distt. Thanke, registered for the offences punishable under Sections 265, 267, 420, 465 R/w. Section 34 of Indian Penal Code and Section 3, 7, 8 and 9 of The Essential Commodities Act and Section 3(6) of the Motor Spirit and High Speed Diesel Order, 2005".

The similar relief shall operate in all the petitions and the order passed earlier stands modified accordingly. "

5. Undisputedly, investigation of the crime in question is over. It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time. **[Refer:Kalyan Chandra Sarkar Vs.Rajesh Ranjan,(2005) 2 SCC 42:[2005 ALL MR (Cri.)1299 (S.C)]**

6. As the investigation of the crime in question is already over, I see no reason to deny liberty to the present applicants. The trial will take its own time for disposal. There is no tangible evidence on record to infer that the applicant

will not be available for trial. The prosecution witnesses are mostly official witnesses and as such there is no question of tampering the prosecution evidence.

7. In the result, the following order.

ORDER

- i) The applications are allowed.
- ii) The applicants/accused in Crime No. I-353-17 registered with police Station Manpada for the offences punishable under Sections 265, 267, 420, 465, 468, 471, 473 r/w 34 of the Indian Penal Code, Section 3(6) of the Motor Spirit And High Speed Diesel (Regulation And Supply Distribution and Prevention Of Malpractices,) 2005 and under Section 3, 7, 8, 9 of the Essential Commodities Act, 1955 be released on bail on executing P.R Bond of Rs. 30,000/- and on furnishing one or two sureties in the like amount, by each of them.

iii) The applicants/accused should not tamper with the prosecution evidence.

iv) As a condition of this order, the applicants / accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court or to the Police Officer.

v) The applicants to attend each and every date fixed for hearing before the concerned Court and they should not protract the trial at their instances.

vi) Moreover, as the investigation of the crime in question is going on, the applicants/accused to attend the concerned police station once in a week i.e. on every Sunday in between 11.00 a.m. to 1.00 p.m. until further orders.

vii) In view of disposal of the bail applications, pending criminal application stands disposed of.

viii) The applications are disposed of accordingly.

(A.M. BADAR, J)