

30- BA Nos. 631, 531, 594, 673, 675 of 2018
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 673 OF 2018

Avinash Ram Kachhave ...Applicant
Vs.
The State of Maharashtra ...Respondent

WITH
BAIL APPLICATION No. 531 OF 2018

Vilas Kisan Matkar ...Applicant
Vs.
The State of Maharashtra ...Respondent

WITH
BAIL APPLICATION No. 631 OF 2018

Umesh Shankar Markad ...Applicant
Vs.
The State of Maharashtra ...Respondent

WITH
BAIL APPLICATION No. 594 OF 2018

Shankar Shantaram Gaikwad ...Applicant
Vs.
The State of Maharashtra ...Respondent

WITH
BAIL APPLICATION No. 675 OF 2018

Sanjay Shivling Wagholikar

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. Aniket U. Nikam i/b. Mr. Aashish Satpute for Applicant in BA 651/2018 & BA 531/2018

Mr. Satyavrat Joshi for Applicant in BA 594 of 2018

Mr. D.S. Mhaispurkar for Applicant in BA 673 of 2018

Mr. M.S. Mohite i/b. Mr. Sachin H. Deokar for Applicant in BA 675 of 2018

Mr. S.R. Agarkar -APP for State in BA 651 of 2018, BA 531 of 2018, BA 673 of 2018

Ms. Veera Shinde – APP in BA 594 of 2018, BA 675 of 2018

Mr. Harshal Kadam, PSI, Crime for Pune City.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE: AUGUST 6, 2018

P.C.

1. Heard. These are the applications under section 439 of the Criminal Procedure Code.

2. The Applicants herein are charge-sheeted in Crime No. 235 of 2016 registered at Mundhawa Police Station, Pune for the offences punishable under section 3 and 7 of the Essential Commodities Act along

with Section 3(1) (ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOCA).

3. It is the case of the prosecution that on 26th October, 2016, Smt. Anita Shingare, who was officiating as Supply Officer from the Food and Civil Supplies Department, had lodged a report at the police station, alleging therein that she looks after all public distribution system as well as the maintenance of the records as far as ration cards and fair price shops are concerned. On 26th October, 2016, She was informed by one Shri Dandge that three persons have been accosted by the police in front of Kalyani Women Self Help Group (Mahila Bachat Gat) and they have seized the goods from two tempos which were transporting the food grains illegally and that the said food grains appeared to be the food grains meant for public distribution system. She had been to the spot and had seized incriminating material such as sealing of the food grains packets and other material. Upon inquiry, it was revealed that the said goods were to be transported through Vilas Matkar, Applicant in

Application No. 531 of 2018 and Umesh Markad, Applicant in Application No. 631 of 2018 to the shop of Sanjay Waghlikar, Applicant in Application No. 675 of 2018. The trucks were seized. The drivers Gorakh Kurad and Anil Mathkar as well as Shankar Gaikwad were arrested.

4. In the course of investigation, it was learnt that the kingpin of the said racket was one Mr. Avinash Kachhave, Applicant in Application No. 673 of 2018.

5. It is the case of the prosecution that there were more than seven offences registered against Mr. Avinash Kachhave under section 3 and 7 of the Essential Commodities Act. He was running a shop in the name of Pawan Trading Company and Om Enterprises in the name of Vilas Kisan Mathkar. They had license under the Shops and Establishment Act. It is pertinent to note that accused Avinash Kachhave was detained under the Maharashtra Prevention of Dangerous Activities Act, 1981 (MPDA Act) from 14.11.2016 and the detention was to be remain in

force for a period of one year i.e. upto 14.11.2017. However, in March, 2017, he was taken into custody in the present case.

6. The learned counsel for the Applicant in Application No. 673 of 2018 submits that in fact, accused Avinash Kachhave does not possess any license under the Essential Commodities Act and, therefore, he could not have been prosecuted or punished under section 7 of the Essential Commodities Act for committing breach of any condition contemplated under section 3 of the said Act. It is further stated that the provisions of MCOCA would not be applicable in the present case as there is no material to indicate that the goods were obtained by accused Avinash Kachhave under force or under coercion. The statements of the witnesses do not indicate that there was any violence involved in obtaining the food grains from the fair price shops and that the license holder of the fair price shop has voluntarily sold food grains meant for public distribution system to the present Applicant by putting them in other bags thereby causing disappearance of the evidence that there

were Essential Commodities marked by the Government.

7. As far as accused Sanjay Wagholikar is concerned, the learned counsel for the Applicant in Application No.675 of 2018 submits that he has a license under the Essential Commodities Act. There are as many as four cases registered against the Applicant. The offences are registered at different police stations such as Wadgaon Nimbal Police Station, Pimpri Police Station, Raigad Police Station and Satara Police Station under section 3 and 7 of the Essential Commodities Act.

8. It is the contention of the learned counsel for the Applicant that the provisions of the MCOC Act could not have been applied in the facts of the case. As far as the accused Vilas Mathkar is concerned, he has two criminal antecedents i.e. Crime No. 3298 of 2013 registered at Nigdi Police Station and Crime No. 235 of 2016 registered at Mundhawa Police Station.

9. The learned counsel for the Applicant submits that Avinash Kachhave was in fact the proprietor of the Om Enterprises. However,

the license under the Shops and Establishment Act was in the name of Vilas Mathkar. Accused Shankar Gaikwad was working as a driver on the truck owned by Vilas Mathkar.

10. As far as Accused Umesh Markad is concerned, there are two offences registered against him under the provisions of the Essential Commodities Act and they are Crime No. 157 of 2015 registered at Shivaji Nagar Police Station and Crime No. 3060 of 2016 registered at Khadak Police Station.

11. The learned counsels for the Applicants have vehemently submitted that except Sanjay Wagholikar, the other accused persons could not have been prosecuted under the provisions of the Essential Commodities Act. Similarly, the respective counsels have placed reliance upon the orders passed by this Court in the earlier cases i.e. in case of Arun Ghorpade vs. State of Maharashtra in Criminal Bail Application No. 863 of 2016.

12. It is, in these circumstances that although the provisions of MCOC

Act are applied, this Court would record the satisfaction that since Avinash Kachhave, who was the kingpin in the present case, has undergone the period of detention under the provisions of the MPDA Act, he cannot be incarcerated further in the present case. It is for the prosecution to take appropriate action against the Accused-Applicants under different provisions of law. Hence, the Applicants are enlarged on bail.

13. The observations are prima facie in nature and shall not be taken into consideration for discharge application or at the time of trial. Hence, the following order.

Order

- (i) Applications are allowed.
- (ii) Applicants are enlarged on bail on furnishing P.R. Bond of Rs.1,00,000/- each and one or more sureties in the like amount.
- (iii) The Applicants shall not reside in the jurisdiction of Pune District for a period of six months commencing from 10th September, 2018

except for marking their presence before the Court.

Applications stand disposed of in the aforesaid terms.

[SMT. SADHANA S. JADHAV, J.]