IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3205 OF 2018

Jairaj Sudamprasad Sachan @ Guddu ...**Applicant**

V/s.

The State of Maharashtra ...**Respondent**

Mr. Subhash Jha a/w. Ms. Sanjana Pardeshi & Ashish Jha i/b. Law Global Associates for the Applicant.

Mr. Deepak Thakare, PP a/w.R.M.Pethe for the Respondent/State.

CORAM : PRAKASH D. NAIK, J.

DATED : 19th DECEMBER 2018.

P.C. :

1. This is an application for bail under Section 439 of Code of Criminal Procedure in connection with C.R.No.18 of 2018 registered with Kopri Police Station, for the offences punishable under Sections 109, 114, 212, 407, 411, 420, 467, 471, 120(b) of the Indian Penal Code read with Sections 3, 7, 8 and 10 of the Essential Commodities Act, 1955 read with provisions of the Motor Spirit and High Speed Diesel (Regulation of Supply Distribution

and Prevention of Malpractices) Order 2005. The investigation of the case then transferred to the Crime Branch, Thane.

2. The case of the prosecution is that on 01.03.2018, a secret information was received by the police that driver of Tanker bearing No.MH-04 GR 2073 would proceed to Indore via Agra Highway after checking at Anand Check Naka and the tanker would be loaded with diesel filled up at Nhavasheva from Reliance without uploading the diesel at Mumbai Godi bunker on instructions from the owner of tanker and the contractor by using false bill/invoice of sludge oil issued in the name of bogus party. On receipt of the said information, the complainant and other police personnel alongwith panchas waited at Anand Check Naka and at about 23.40 hours, the police intercepted the driver of the tanker and enquiries were made with him.

3. It is alleged that the driver had disclosed that he was on the way to Indore and the tanker is carrying sludge oil. Upon thorough enquiry, the driver further disclosed that the tanker is

containing 24000 ltrs. diesel to be delivered to Petrol Pump on instructions of owner of the tanker and contractor. It is the case of the prosecution that, on verification, it was noticed that the tanker was carrying diesel. It was also alleged that the driver was transporting diesel to Indore Madhya Pradesh on the basis of false bills/invoices. On further enquiry, it was disclosed by the driver Shakir Ali that, he is working with Safar Transport Company whose owner is one Nabiraja Khan who instructed him to load the diesel from Reliance at Nhavasheva. Hence, the tanker was filled up with 24,000 of diesel after obtaining challan for its delivery to Mumbai Port.

4. It is alleged that three other tankers of Safar Transport were sent for loading diesel at Nhavasheva. The driver of the tanker further disclosed that he was asked to handover challan to one Mehta. He claims to have handed over the challan/invoice to one Mehta and in exchange, he was given false invoice to deliver sludge oil to Richita Trading Pvt.Ltd., Indore, Madhya Pradesh. According to the driver, he was proceeding to the said destination.

The FIR came to be registered. It is alleged that another tanker bearing No.MH-04EL 4534 driven by accused No.5, loaded 18,000 liters of high speed diesel had already reached Indore, Madhya Pradesh, instead of delivering it at Mumbai dock and the diesel was sold through accused No.3 (applicant) to B.L. Goyal Infrastructure Pvt. Ltd. at Indore, Madhya Pradesh. It is alleged that when the investigating team visited said place, they found said diesel tanker was emptied in the underground tank and therefore, they seized 11275 ltrs. Of diesel from underground tank stored illegally.

5. The applicant was arrested on 07.03.2018. He was produced for the Competent Court for remand. Initially he was remanded to police custody and thereafter to judicial custody. The other accused were also arrested. On completing the investigation, charge-sheet has been filed against the applicant.

6. Learned counsel for the applicant submitted that there is no evidence against the applicant showing his involvement in the

crime. The investigation is contrary to the provisions of law. It is further submitted that the procedural safeguard under the Essential Commodities Act, 1955 were not carried out. The provisions of Essential Commodities Act, 1955 ought not to have been invoked in the present case. Provisions of Essential Commodities Act are not applicable to high speed diesel. There is no shortage of said commodity. The charge-sheet is filed by the official who had no authority to conduct investigation. The power of search and seizure under Section 7 of motor spirit and high speed diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order 2005 can be exercised by any police officer not below the rank of Deputy Superintendent of police authorities by Government. It is further submitted that the applicant is in custody from the date of arrest. The investigation is completed and the charge-sheet is already filed. Further detention of the applicant is not necessary. The charge under Section 467 of the IPC is not attracted in the present case. One of the accused has been granted bail by this Court. Further custody of the applicant is not necessary.

7. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***Hussain & Another Vs. Union of India***[1] and some of the orders passed by this Court in Criminal Bail Application No.751/2015 and Criminal Bail Application No.494/2015.

8. Learned APP submitted that the applicant is involved in a serious crime which affects the economy. He has acted in connivance with the other accused in disposing of the diesel which was illegally transported to Indore. Accused in furtherance of common intention directed tankers of diesel to Indore for disposal of diesel on the strength of forged invoices depicting the contents as sludge oil. The applicant has illegally sold diesel on the basis of forged invoice. The applicant is beneficiary of amount. Various documents are recovered showing involvement of applicant. The applicant is involved in sale of diesel at Indore. Investigation is still going on. Some of the accused are yet to be arrested. The modus of transporting diesel was reflected in statement of Mustq Israr Ahmed Khan. Learned APP also pointed statement of Pradip Dargi

1(2017) 5 Supreme Court Cases 702

which indicates transfer of money to Nabiraja through applicant. The invoice was issued in the name of Savas Enterprises for delivery of sludge oil to Rishika Trading Private Limited which was fabricated document. It is submitted that the high speed diesel was to be delivered to Royal Gandak borge and than to Rohn Tappmayer Rig. Safar Tranport engaged four tankers. Two tankers reached Gandak broge. One tanker was intercepted at Thane carrying 24KL HSD and another tanker delivered 18KL HSD to local buyer at Indore. The fabricated invoice attracts provision of Section 467 of the Indian Penal Code.

9. Learned APP relied on the decision of the Hon'ble Supreme Court in the case of ***Nimmagadda Prasad Vs. Central Bureau of Investigation***[2]. In the said decision, it is observed that white collar crime has affected the fibre of the country's economic structure. Economic offences have serious repercussions on the development of the country.

10. I have perused the documents. It is the case of the

2 2013 CRI.L.J.3449

prosecution that four tankers were supposed to carry diesel which was to be delivered to Gandak in Barge. Two tankers had reached the right destination. Two tankers did not deliver diesel to Gandak Barge. One of them was intercepted at Thane and the other tanker had reached Indore and diesel was sold to local buyer at Indore. The statement of Munindersing indicate that the tankers were provided by Marine Oil Company and it is the responsibility of said transport company to deliver the oil. Nabiraja is the owner of Safar Transport. The prosecution case is that the co-accused had fabricated letterhead in name of Saras Enterprises. Statement of Mustak Khan shows that false invoice was given by one Mehta Shafia. He has stated that diesel is being distributed on instructions of applicant and since he is employee of Nabiraja and as per his directions he is supposed to work. It is contended by applicant that, it is not established that applicant had knowledge that invoice is forged. The source of invoice is not the applicant. The role that has been attributed to the applicant is of disposing of the diesel, which was already transported through one of the tanker at Indore. The diesel was being sold to the

Petrol Pump at Indore and the amount was received. The evidence on record indicate that the applicant was utmost concerned with disposal of diesel and on collecting the amount, the same was handed over to Nabiraja. The case of the prosecution is that Nabiraja who is owner of the Safar Transport Company had arranged the tankers and was acting in connivance with the other accused. The document i.e. invoice was allegedly handed over, which was collected by the driver of the tanker from one Mehta. After collecting the said document, on the basis of the invoice, the diesel was being transported to Madhya Pradesh. The creation of the documents is further attributed to the other accused. Section 467 has been invoked for fabricating the said documents. Admittedly, the document was used for taking of the diesel and transporting the same. The amount has been admittedly transferred to Nabiraja. The applicant has charged commission for selling the diesel. Although, it is alleged that the applicant was selling the diesel illegally, it has to be seen that the applicant is in custody from the date of arrest. The investigation is already completed and the charge-sheet is already filed. The role of the applicant is distinct from the other accused.

11. It was also pointed out that the one case is registered against applicant. However, the learned counsel for the applicant submitted that only case which is registered against the applicant is under Section 323, 203, 504 of the Indian Penal Code. There is no other case registered against the applicant.

12. In the circumstances, it is not necessary to keep the applicant in further detention and the case for grant of bail is made out. Hence, I pass the following order :-

ORDER

(i) Criminal Bail Application No.3205 of 2018 is allowed and disposed off;

(ii) The applicant is directed to be released on bail in connection with C.R.No.18/2018 registered with Kopri Police Station and investigation by Crime Branch, Thane, on furnishing PR bond in the sum of Rs.50,000/- with one or two solvent local surety in the like amount;

(iii) The applicant shall report the concerned police station once in a month on every first Saturday between 11.00 a.m. and 1.p.. till further orders;

(iv) The applicant to furnish the details of his residential proof to the trial Court while executing the bail bond.

(v) The applicant shall not tamper with evidence and shall attend Trial Court proceedings regularly, unless exempted by the Court for any reason;

(vi) Application is disposed off.

(PRAKASH D. NAIK, J.)