

2. Heard learned Senior Advocate Mr. R.S. Deshmukh instructed by Advocate Mr. D.R. Deshmukh for the applicant and learned APP Mr. A.M. Phule for the respondent-State.

3. It is submitted by the learned senior Advocate Shri R.S. Deshmukh instructed by Advocate Mr. D.R. Deshmukh for the applicant that upto now, two charge sheets have been filed in connection with the same offence. The investigation is carried out by Deputy Superintendent of Police, Crime Investigation Department (CID), Aurangabad. The first charge sheet which was filed before the learned J.M.F.C Naigaon on 06.08.2019 is against 19 persons bearing RCC No.67 of 2019. Second charge sheet was filed against one accused bearing RCC No.29 of 2020. In both the charge sheets name of the present applicant is not mentioned as suspected accused. However, now he is unnecessarily being called again and again. Perusal of the first information report lodged by Assistant Police Inspector, Shivprakash Mulay on 19.07.2018 would disclose that special squad was constituted by Superintendent of Police, Nanded and he was the incharge. He along with his squad was patrolling at about 04.00 pm on 18.07.2018, he received a secret information that illegal transportation of essential commodities of wheat and rice is being carried out from the godown of Food Corporation of India (FCI) to the company of Baheti Group namely M/s. India Megal Agro Anaj Limited. It was found that 10 trucks loaded with wheat and rice were proceeding from FCI godown towards Krushnur MIDC. At about 08.30 pm, all the trucks entered in the premises of the Baheti Group company and at that time,

the raid was conducted. Each truck loaded with essential commodities were seized. There were 6000 wheat gunny bags weighing 50 kg each bearing monogram of Government of Punjab and FCI and therefore, he lodged the offence. It was the further story that 10 drivers of those trucks were arrested and they were in Magisterial Custody. They were released later on. First charge sheet would reveal that many witnesses had taken the name of the present applicant and it was contended that many vehicles used to come in the company premises from Hingoli, Nanded and other districts containing grains meant for ration shop and all these is being done through Munim of the company and broker (dalal) Shrinivas Digambar Damkondwar i.e. present applicant. Those statements were recorded on 26.07.2018, 27.07.2018, 06.09.2018 respectively. However, except mentioning the name nothing has been more attributed to him. In spite of all this fact, notice was issued under Section 160 of the Code of Criminal Procedure by CID Officer on 07.05.2019. At that time, the applicant appeared before the Investigating Officer Mr. R.K. Gujjar, Deputy Superintendent of Police, CID. The interrogation with the present applicant was done, his statement was recorded but the attitude of the investigating agency was hostile. He was not arrested by the investigating officer at that time. The applicant is specifically making statement that the investigating officer was insisting him that he should give

statement which would be favourable to the prosecution, which the applicant refused and therefore, now he has been tried to be roped as an accused. When the investigation has been done twice, the physical custody of the applicant is absolutely not required.

4. Per contra, learned APP strongly opposed the application by saying that the witnesses are contending that the present applicant is the main person on whose directions the food-grains used to be supplied to Baheti Group. The said food-grains was specially meant for distribution in the public distribution system. It was also pointed out that certain orders have been passed by the Division Bench of this Court in public interest litigation raising concern about the offences in question and because of which some revenue officers are in trouble. The magnitude of the offence is likely to be widened though two charge sheets have been filed, yet, the investigation is not over. The offence is relating to the economy of the State. The public distribution system is used for providing food-grains at an affordable price to poor persons and the said grains is illegally transported to such big companies and thereafter, it is sold in open market at a very high price because of which such persons are becoming rich. The gunny bags which were seized in this matter were having monogram of the Government of Punjab. It is very much therefore clear that the said bags were meant to be put in

public distribution system. Learned APP, therefore, submitted that the custodial interrogation of the applicant is required.

5. At the outset, it is to be noted that twice charge sheet has been filed. In none of these charge sheets, name of the present applicant has been mentioned either as an accused or suspected to be an accused. Perusal of the first charge sheet which was filed on 06.08.2019 shows that there were 19 accused persons and most of them are the drivers of those 10 trucks. The statements of the witnesses which were recorded during the said course of investigation appears to be not produced, though they were taken prior to the date of filing of the charge sheet but they appear to have been produced along with the second charge sheet, which appears to have been filed on 19.03.2020. Statement of one Narayan Niwale, who was serving with M/s. Parsewar and Company has stated that M/s. Parsewar and Company had taken 7 trucks owned by the present applicant on contract. Narayan Niwale's statement was recorded on 24.07.2018 wherein name of the present applicant is definitely appearing. Thereafter, statement of one Bhimrao Mariba Kamble was recorded on 26.07.2018 and statement of one Laxmikant Maroti Jadhav has been taken on 06.09.2018 and statement of Balaji Shivaji Jadhav was taken on 06.09.2018. In all these statements name of the present applicant is appearing and also it is stated that those activities were being done on the say of the present applicant. The

question and the conduct of the Investigating Officer itself is a question now for the simple reason, if those statements were available with him and in this context, we could see the fact that the present applicant is stated to have appeared before the Investigating Officer, in view of notice under Section 160 of the Code of Criminal Procedure on 07.05.2019, why he was not arrested. It is also surprising to note that in both the charge sheets, name of the present applicant is not appearing and no explanation is now coming forward from the Investigating Officer in this respect. Merely by saying that the magnitude of the offence has now increased, it will not actually increase unless the Investigating Officer acts in a swift manner without influenced by anything. It appears to be the inaction or in other words not taking swift action though the statements were on record since about 1 ½ to 2 years. It allows this Court to infer that the physical custody of the present applicant is not required for the purpose of investigation and therefore, his liberty need not be curtailed. Some of the accused persons have been granted interim bail by this Court and some have been released on regular bail. Under such circumstance, the following order is passed:

### **ORDER**

- I) The application stands allowed.
- II) In the event of arrest of the applicant in connection with Crime No.109 of 2018 dated 19.07.2018 registered with Kuntur

Police Station, Taluka Naigaon, District Nanded for the offences punishable under Sections 166, 201, 409, 420, 406, 467, 468, 471, 477-A, and 120-B read with 34 of the Indian Penal Code and under Section 3 and 7 of Essential Commodities Act, he be released on P.R. of Rs. 2,00,000/- (Two lakhs) with two sureties in the like amount, subject to the following conditions:

- a) The applicant shall remain present before the Investigating Officer as and when called for which the Investigating Officer to give prior notice of 48 hours.
- b) The applicant shall not tamper and hamper with the evidence of the prosecution in any manner and shall co-operate with the investigation.
- c) The applicant shall surrender his passport to the police, if any, and shall not leave India without permission of the Trial Court.
- d) The applicant shall not indulge in any criminal activity.

**(SMT. VIBHA KANKANWADI, J.)**