

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LD-VC CRIMINAL APPLICATION (ABA) NO. 736 OF 2020
(Gajanan s/o Subhash Pund vs. The State of Maharashtra thr. P.S.O., P.S. Hinganghat,
District Wardha)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri Firdos Mirza, Advocate for the applicant.
Shri Amit Chutke, APP for the non-applicant / State.

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CORAM : PUSHPA V. GANEDIWALA, J.
JULY 24, 2020.

Heard Shri Mirza, learned counsel for the applicant and Shri Chutke, learned Additional Public Prosecutor for the State through Video Conferencing.

The applicant apprehends his arrest in Crime No. 363/2020 for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code and Clauses 7, 8, 19(c)(i), (ii), (iii), (iv), (v), (vi), 35(1) of the Fertilizer (Control) Order, 1985 and Section 3(2)(d), 9, 7 of the Essential Commodities Act, 1955 registered at Police Station Hinganghat, District Wardha.

Perused the application, affidavit-in-reply filed on behalf of the State and the documents annexed.

The allegations against the present applicant are that the applicant was selling fertilizers Jay Samarth (18:18:10) manufactured by Jay Keesan Fertilizers and Chemicals, Goregaon, Mumbai and VKB Godawari (10:26:26) manufactured by Venkatesh Krishi Bhandar, Nanded which were not properly packed and were being sold in violation of the various clauses of the Fertilizer (Control) Order 1985.

Learned counsel Shri Mirza appearing for the applicant submits that the imposition of Clause 7 and 8 of the Control Order is erroneous as the applicant is having valid License to deal with the fertilizer and which is undisputedly valid till 01.06.2021.

It is further submitted that there is no allegation to the effect that the applicant is selling any imitation or a substituted of another fertilizer or any adulterated fertilizer.

It is further stated that there are no allegations that the aforesaid two Companies are fictitious and, therefore, imposition of offence under Clause 19(c)(iv) is unwarranted against the applicant.

It is further stated that the applicant had received only a part of his order and rest was to be received in installments.

Learned Counsel for the applicant also submits that the entire record is already seized and is in possession of the authorities. The stock received by the applicant till the date of the First Information Report is also seized and now, therefore, the entire investigation is completed and the custodial interrogation of the applicant is not necessary.

As against this, learned APP strongly opposed the application and submitted that the fertilizers which were found at applicant's establishment were not manufactured by the registered manufacturer.

It is the main contention of the learned APP that custodial interrogation of the applicant is required in order to trace out the source of manufacturers and details about the actual procurement of fertilizers and its sale.

I have considered the submissions made on behalf of both the parties.

At the outset, the applicant being a registered License Holder and a retailer in selling seeds and fertilizers, there are least chances of his absconding.

Secondly, the affidavit-in-reply filed on behalf of the State does not reveal any criminal antecedent against the present applicant.

Thirdly, the Prosecution does not deny that the entire record and the impugned fertilizers have been already seized by the Police.

The period of the maximum punishment for the alleged offence is imprisonment up to 7 years.

As rightly point out by the learned Counsel for the applicant that the alleged offence is of a technical nature and, therefore, custodial interrogation of the present applicant would hardly be necessary. Directions to attend the police station and to co-operate during investigation would, in my opinion, suffice the purpose.

For the reasons aforestated, the case for pre-arrest bail is made out.

In the event of arrest of the applicant in Crime No. 363/2020 for the offence punishable under Sections 420 read with Section 34 of the Indian Penal Code and Claus 7, 8, 19(c)(i), (ii), (iii), (iv), (v), (vi), 35(1) of the Fertilizer (Control Order, 1985 and Section 3(2)(d), 9, 7 of the Essential Commodities Act, 1955 registered at Police Station Hinganghat, District Wardha, he be released on interim bail on execution of Personal Bond in the sum of Rs. 25,000/- (Rs. Twenty five thousand only) with one solvent surety in the like amount.

The applicant shall attend the concerned police station once in a week i.e. on every Monday

during the period between 11.00 a.m. and 2.00 p.m. till filing of chargesheet and also to make available himself as and when required by the Investigating Officer.

The applicant shall not leave their local jurisdiction without prior intimation to the concerned police station.

The applicant shall not give threats to the witnesses or tamper with the evidence.

This order be communicated to the counsel appearing for the parties, either on the e-mail address or on Whats app or by such other mode, as is permissible in law.

JUDGE

D.S. Baldwa