

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

921 ANTICIPATORY BAIL APPLICATION NO.197 OF 2021

Rajeshwar Vaijanathrao Bukey
Age : 57 years, Occ. Chairman and M.D.
R/o. Shivani (Bk.) Tq. Ausa,
Dist. Latur.

... APPLICANT

VERSUS

The State of Maharashtra
through Inspector,
State Excise Department, Latur
Tq. Latur, Dist. Latur

... RESPONDENT

AND

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Advocate for Applicant : Ms. P.R. Deshpande
APP for Respondent/State: Mr. S.P. Sonpawle

...

CORAM : MANGESH S. PATIL, J.

DATE : 06.04.2021

PER COURT :

These are Applications under Section 438 of the Code of
Criminal Procedure in two different Crimes bearing Crime No. 21/2021 and

Crime No. 22/2021 registered with the same Police Station i.e. State Excise Police Station, Latur for same offences punishable under Section 65(c)(d), 70, 72, 83 and 90 of the Maharashtra Prohibition Act, 1949.

2. Since the applicant in both these applications is the same person who has been arrayed as accused No.7 in both these crimes registered in succession on similar set of facts and since the applicant is being represented by the same advocate, both the matters have been heard simultaneously and are being disposed of by this common order.

3. Shortly stated the allegations in the FIRs lodged by Constables of the State Excise Department are to the effect that when the Officers of the Excise Department received a tip offs that huge quantity of molasses was being transported illegally in two vehicles bearing No. MH-13 CU 5803 and No.MH-13 CU 1618, the raiding party layed in wait and accosted both the vehicles. On search it was found that the first vehicle was having 38 barrels containing 200 ltrs of molasses each, in aggregate 11 metric ton worth Rs.44,400/- whereas the other vehicle was containing 27 barrels having 200 ltrs each of molasses whereas few barrels partly filled with molasses, in aggregate containing 9 metric ton. Accordingly, two separate FIRs were lodged and the offences were registered.

4. It is further alleged that during course of investigation it was transpired that the molasses was being illegally transported from the Sugar Factory of which the present applicant is the Chairman. There was a shortfall of the stock of molasses in the Sugar Factory. Though the factory

was having necessary permit, without maintaining proper record of stock molasses was allegedly being transported illegally by hatching conspiracy all the accused including the applicant have committed these crimes.

5. The learned advocate for the applicant vehemently submits that the applicant is being falsely implicated. The Sugar Factory of which he is the Chairman was admittedly holding necessary permit which enables it to transport molasses. Assuming that molasses was being illegally transported, the applicant cannot be made vicariously liable. He is being implicated only because he happens to be the Chairman of the Sugar Factory.

6. The learned advocate would further submit that the maximum punishment awardable under the offences being charged is upto 5 years and it was expected of the investigating machinery to ensure that there was proper compliance with the provision of Section 41-A of the Code of Criminal Procedure. Without resorting to such legal mandate, the applicant is now being sought to be arrested.

7. The Investigating Officer effected entry into the house of the applicant by broking open the iron gate of their house that too in the night hours, which act was utterly illegal. The notice under section 41-A of the Code of Criminal Procedure was not properly served.

8. The learned advocate would, lastly, submit that the Muddemal Property has been recovered. Nothing is to be recovered from or discovered by the applicant. He is a reputed person and the Chairman of the Sugar Factory. He would be put to disrepute if he is allowed to be arrested without

assurance of the bail. He is a politician. He had contested an election for the post of MLA from Ausa constituency. There are no criminal antecedents. He is ready to cooperate the Investigating Officer and the Applications may be allowed.

9. The learned APP opposes the Applications. He submits that offence is serious. A huge quantity of molasses was being illegally transported. Considering the enormity of the quantity, specific allegations are being levelled that it is pursuant to some conspiracy that the offence punishable under Sections 70 and 72 has been committed and that is why Section 83 of the Maharashtra Prohibition Act has been invoked. Some of the accused are still absconding. The applicant is the Chairman of the Sugar Factory. Such a huge quantity of molasses could not have been transported without his active knowledge and involvement. The record of the stock has also been verified. There is a shortfall in the stock. Though the muddemal property has been recovered, custodial interrogation of the applicant is necessary. As per the Bombay Molasses Rules, 1955 there should have been an upto date record maintained by the licensee like the Sugar Factory in the present matter holding a licence in Form M-1. Therefore there is enough material to *prima facie* reveal involvement of the applicant in commission of the crimes.

10. The learned APP would further submit that statements of Security Guards of the Sugar Factory have also been recorded which corroborate the prosecution version about all the accused including the

present applicant having managed to take out the stock of the molasses out of the factory premises. All these circumstances are sufficient to reject both the Applications.

11. I have carefully gone through the papers of the Investigation. Though the learned advocate for the applicant has ingeniously sought to take shelter of the fact that the applicant is being implicated being the President of the Sugar Factory and the offences cannot be made out against him in the absence of any *mens rea*, however, it is to be noted that the prosecution has been invoking Section 82 of the Maharashtra Prohibition Act as well, which specifically covers the cases where the offences under the Act are committed by hatching conspiracy. It is being specifically alleged now that the applicant was having active involvement and by hatching a conspiracy with the co-accused has managed to illegally take away huge quantities of molasses. There are statements of some of the staff members of the Sugar Factory who have specifically attributed role to the applicant by saying that it is at his instruction that the molasses was being transported. Therefore it cannot be said that the applicant is being made liable vicariously. It is not a case of vicarious liability. The allegations are specific about he having hatched conspiracy with the co-accused.

12. It is pertinent to note that an attempt was made to serve the applicant with a notice under Section 41-A as it was pasted in the conspicuous part of the premises of the Sugar Factory. Pursuant thereto even the Investigating Officer had been to his house but in spite of assurance

given by his son in presence of his lawyer to keep him present before the Investigating Officer on the next date he failed to obey. This conduct on his part is eloquent enough and clearly demonstrates his unwillingness to cooperate the Investigating Officer.

13. Enormity of the quantity that was being transported from the Sugar Factory to an unknown destination, at this juncture is sufficient to draw an inference that it could not have been a handy work of a person or two and as is being alleged there must be active involvement of several persons at the helm of the affairs of the Sugar Factory like the present applicant.

14. Apart from the above state of affairs, it is also important to note that even at this juncture the applicant has not been able to demonstrate from the record of the Sugar Factory as to how the molasses was duly accounted for in the records of the Sugar Factory. No attempt is also being made to demonstrate as to under which order or contract molasses was being transported. He is conveniently keeping mum as to the destination to which it was being transported. All these facts can be revealed only by resorting to his custodial interrogation.

15. In view of the above state of affairs, in my considered view, the applicant is not entitled to the anticipatory bail. The Applications are rejected.

(MANGESH S. PATIL, J.)