

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

ANTICIPATORY BAIL APPLICATION NO. 563 OF 2021

Bharat Dnyandev Pawar ... **Applicant**
Age 33 years, Occu: Service,
R/o Devkarpeth, Indapur, Reda,
District Pune 413 114

VERSUS

The State of Maharashtra, ... **Respondent**
Through Police Inspector
Visarwadi Police Station,
Tq. & Dist. Nandurbar

Mr. Ruchir S. Wani, Advocate for the applicant,
Mr. N. T. Bhagat, A.P.P. for the State.

CORAM : V. G. BISHT, J.
DATE : 24th August, 2021.

ORDER:

1. This is an application under section 438 of the Code of Criminal Procedure, 1973, preferred by the applicant, seeking grant of pre-arrest bail in connection with Crime No. 123/2020 registered with Visarwadi Police Station, District Nandurbar for the offences punishable under Sections 420 of the Indian Penal Code, 1860, Section 3, 7, 9 and 10 of Essential Commodities Act and Sections 2(h), (k), (n), 4, 6, 7 8(1)(2), 12, 13(1)(2), 19(b)(c), 21, 35 of the Fertilizer (Control) Order, 1985.

2. It is the case of the prosecution that on 12.06.2021, the informant visited the shop of Accused No.2 at Khandbara for inspection

and after inspecting the stock, took three samples of mix fertilizers from Savio Bio Organium & Fertilizer for analysis. It is alleged that analysis of the samples showed that the samples were not in standard as prescribed under the Fertilizers (Control) Order. However, at the same time, it was further stated that the said samples were un-certified. It is further alleged that gypsum was found in huge quantity in the said fertilizers. Thus, the accused had cheated the Government as well as agriculturists.

3. Mr. Ruchir S. Wani, learned counsel for the applicant, submits that no prima facie case is made out by the prosecution against the applicant. The alleged samples were against the provisions of the Fertilizers (Control) Order. According to learned counsel, in the complaint itself, there is a chart wherein result of analysis shows that the samples taken were un-certified and as such the concerned Laboratory should have denied to give any report on the said un-certified samples. This being so, the first information report filed does not hold good against the applicant.

4. Mr. N. T. Bhagat, learned A.P.P., on the other hand, fairly admitted the finding of the report and submits that necessary orders be passed.

5. A bare reading of the first information report, more particularly, a chart given therein, would show that the samples which were taken for analysis were un-certified and if it was so, then I fail to

understand how the concerned laboratory went ahead and gave report on the basis of said un-certified samples. So also, if it is taken for the sake of argument that the seized goods contained gypsum, the provisions of the Fertilizers (Control) Order and Essential Committees Act would not be attracted. So is the case in respect of applicability of section 420 IPC, inasmuch as, the allegation of having sold these chemicals to the agriculturists is against the co-accused and not the present applicant.

6. Thus, for the aforesaid reasons, the present application deserves to be allowed.

7. Hence, I pass following order:

ORDER

- i. The application is allowed.
- ii. Interim relief granted by this Court on 1st June, 2021 is confirmed and is made absolute.

(V. G. BISHT, J.)

JPC