

Shaikh Ahmed s/o Shaikh Nisar ... **Applicant**
Age 36 years, Occu: Business
R/o Paldhi, Tq,. Dharangaon,
District Jalgaon

The State of Maharashtra,
Through M.I.D.C. Police Station Jalgaon
District Jalgaon.

CORAM : V. G. BISHT, J.
RESERVED ON : 30th August, 2021
PRONOUNCED ON : 7th September, 2021

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. 0452/2021 registered with M.I.D.C. Police Station, Jalgaon for the offences punishable under Sections 3 and 7 of the Essential Commodities Act, 1955.

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away however one person namely Shaikh Anwar @ Bablu Shaikh Gafar who was standing there disclosed that the goods in the vehicle were belonging to him and he runs Ration Shop No. 68 in Ward No. 38/1 of one Shaikh Ahmed s/o Shaikh Nisar i.e. present applicant. Shaikh Anwar @ Bablu Shaikh Gafar further disclosed that the truck is having 131 bags of wheat, 141 bags of rice, each bag weighing 50 kg approximately. Offence accordingly came to be registered.

3. Ms. Naseem R. Shaikh, learned counsel for the applicant, submits that it is only on the basis of statement of Shaikh Anwar @ Bablu Shaikh Gafar, the present applicant came to be involved in the alleged offence. It is not the case of prosecution that applicant was present at the time of alleged incident. Merely because of statement of co-accused which is not admissible in evidence, criminal liability could not have been fastened on the applicant. As far as the owner of the said vehicle is concerned, he has already been released by the trial court on regular bail, contended learned counsel. In such circumstances and the fact that applicant is permanent resident of Jalgaon having no criminal antecedents, there is no possibility of his fleeing from justice. Therefore, the application deserves to be allowed, urged learned counsel.

4. Mr. A. V. Deshmukh, learned A.P.P., on the other hand, vehemently argued and submitted that the bags of wheat and rice so seized belong to the applicant. Learned A.P.P. also invited my attention to the statements of witnesses recorded during course of investigation

including spot panchanama and as also observation of learned trial court recorded while rejecting anticipatory bail application of the applicant. According to the learned A.P.P., investigation is in progress and on all these grounds prayed to dismiss the application.

5. I have gone through the investigation papers and as also through the submissions of the either parties. There is an allegation that there was illegal transportation of ration goods i.e. wheat and rice which were meant for public. However, there is no dispute that the applicant was not found at the time of transportation of alleged ration goods. It is merely on the basis of the statement of accused Shaikh Anwar @ Bablu Shaikh Gafar that said ration goods were belonging to the ration shop of the applicant, he has been roped in the alleged offence. Needless to state, statement of co-accused will not further the case of prosecution in any manner.

6. Apart from above, it is also clear from the penal provisions that alleged offences are not punishable with death or imprisonment for life. The punishment is only imprisonment for one year and fine and the goods are liable to be confiscated. It is also pertinent to note here that the alleged goods have been already seized by the investigating officer and there is nothing to be recovered. In such circumstance custodial interrogation of the applicant is ruled out.

7. For the aforesaid reasons, I am inclined to allow the application. Hence, following order:

O R D E R

- i. In the event of arrest of the applicant in connection with Crime No. 0452/2021 registered with M.I.D.C. Police Station, Jalgaon for the offences punishable under Sections 3 and 7 of the Essential Commodities Act, 1955, the applicant is directed to be enlarged on bail on his furnishing P.R. Bond of Rs. 25,000 /- [Rs. Twenty five thousand only], with one or two solvent sureties in the like amount.
 - ii. The applicant shall attend concerned police station as and when called and shall cooperate with the police in the investigation.
 - iii. The applicant shall not tamper with prosecution evidence in any manner.
8. Application stands disposed of in the aforesaid terms.

(V. G. BISHT, J.)

JPC