

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

CRIMINAL WRIT PETITION NO.1905 OF 2019

Pandurang Ramrao Sawant
Age 45 years, Occ-Agri.
R/o Pimgli, Tq. and Dist
Parbhani.

.. PETITIONER

VERSUS

The State of Maharashtra
Through Police Station Kotwali,
Parbhani,
Dist.Parbhani.

.. RESPONDENT

....

Advocate Shri Hanumant Jadhav (appointed) for the Petitioner.
A.PP. Shri V.M.Kagne for respondent State.

....

CORAM : MANGESH S. PATIL, J.
DATE : 02.02.2021

ORAL JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

2] In this Petition under Article 227 of the Constitution of India, the petitioner who happens to be one of the accused before the Magistrate in R.C.C.No.465/2016 arising out of Crime No.305/2016 registered for the offences punishable under Sections 409, 420, 468, 471 read with Section 34 of the I.P.C. and Sections 3 and 7 of the Essential Commodities Act, is impugning the concurrent orders of the trial Court and the Sessions Court

refusing his request to discharge him under Section 239 of the Cr.PC.

3] Shortly stated the allegations by the prosecution are to the effect that the petitioner is a licensee of a fair price shop of a public distribution system. The co-accused who is a godown keeper of a Government godown failed to maintain the record. Instead he maintained a parallel record and with the help of the applicant indulged in rampant misappropriation and criminal breach of trust by siphoning Government stock.

4] The learned advocate for the petitioner would submit that accepting the allegations at their face value none of the ingredients for the offence being levelled against him can be made out. There is no misappropriation. Without considering the utter lack of material both the Courts below have refused to discharge the petitioner. Both the orders being perverse and arbitrary be quashed and set aside and the petitioner be discharged.

5] The learned A.P.P. would submit that there is ample evidence revealing complicity of the applicant in commission of the crime, the details of which have been elaborated in the charge sheet. The co-accused godown keeper maintained a parallel record regarding stock in the godown just to enable him to misappropriate the Government stock hand in gloves with the applicant. Reference to his name can also be found in the record maintained by the godown keeper. It being a case of siphoning of Government stock the two Courts below have rightly refused to discharge the petitioner.

6] I have carefully gone through the papers. Needless to state that in order to seek a discharge by resorting to the provisions of Section 239 of the

Cr.P.C., it has to be demonstrated that the charge is groundless.

7] Bearing in mind such a requirement if one examines the record there is enough material to *prima facie* reveal involvement of the petitioner in commission of the crime. Parallel record maintained by the co-accused who happens to be the godown keeper clearly mentions stock delivered to the petitioner. Besides there are statements of the witnesses who have specifically made grievance about the petitioner having refused to distribute grains to them through his fair price shop. Considering the *modus operandi* there is every room and material to believe that the petitioner must have aided the co-accused godown keeper in commission of the offence.

8] It is trite that this Court while exercising writ jurisdiction would be slow in interfering in the concurrent findings of the two Courts below particularly which are based on appreciation of facts. Needless to state that veracity or otherwise of the allegations can only be ascertained at a fulfilled trial. At this stage the material is sufficient enough to refute the petitioners stand about the charge being groundless.

9] The Writ Petition is dismissed. The Rule is discharged.

10] Advocate Shri Hanumant Jadhav is appointed to represent the petitioner. The Legal Services Authority, High Court, Aurangabad shall pay Rs.3000/- as his remuneration.

[MANGESH S. PATIL, J.]