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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2436 OF 2021

Mohmmad Aslam ...Applicant

Versus

State of Maharashtra ...Respondent

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Mr.Veerdhawal Deshmukh for the Applicant.

Mrs. Anamika Malhotra, APP for the Respondent -State.

Mr.M.V. Biranje, NC-1198, Kagal Police Station, District –
Kolhapur.

.....

CORAM: V.G.BISHT, J.

DATE: 22ND NOVEMBER, 2021

PC:-

1. By this application, the applicant seeks pre-arrest bail in connection with C.R.No. 308 of 2019 registered with Kagal Police Station, Kolhapur for the offences punishable under Section 420 of the Indian Penal Code (the IPC) and under Sections 3 (2) (d) and 9 of the Essential Commodities Act and under Sections 7, 11 (5), 12, 19 (c) (ii) and 21 (A) of the Fertilizers Control Order, 1985 (for short, “ the FCO, 1985”)

2. It is the case of the prosecution that the informant was inspecting the fertilizer sale centre of one M/s. Yashodhan Agro Services, Kagal and found that “Super Potash” (a suspected fertilizer) manufactured by M/s. Jaipur Bio Fertilizers of Rajasthan was stored without any legal permission.

3. It is further alleged that the Fertilizer License No. LAFD 14080282 of M/s. Yashodhan Agro Services, Kagal was valid as on 16th May, 2019 but they had not renewed in time. It is further alleged that the informant under the provisions of FCO 1985 took from the suspected Super Potash fertilizer bag, a fertilizer sample bearing No. 14012310720192020F and sent it to the Fertilizer Control Laboratory for analysis. It is alleged that when the analysis report No. 717 dated 16th August, 2019 was received from Fertilizer Control Laboratory, Kolhapur, it was mentioned that 5 number grade of “straight potassium fertilizers” under 1 (C) of Schedule I Part A of FCO 1985 of the fertilizer sample No. 14012310720192020F is “Potash

Derived from Molasses”. Accordingly, offence came to be registered.

4. Mr. Deshmukh, learned Counsel for the applicant, submits that only the first analysis report was taken into consideration. The sample, however, was not sent for second and third analysis. As per the provisions of 32-A of FCO 1985, according to learned Counsel, the reference analysis (second report) supersedes the first report. The third analysis report supersedes both- the first and second reports and shall be treated as final. Learned Counsel, lastly, submits that the third reference has been issued on 27th January, 2021 by the National Test Report (East Region), Government of India stating that the product “Super Potash” failed to meet the requirements for being classified as “Potash Derived from Molasses”. Moreover, M/s. Yashodhan Agro Services, Kagal has renewed the license in question. For all these reasons, the ad-interim protection granted in favour of the applicant deserves to be confirmed, argued learned Counsel.

5. Mrs.Malhotra, learned APP, on the other hand, fairly submits that the licenses has been renewed by M/s. Yashodhan Agro Services, Kagal and in view of third reference report, an appropriate order may be passed.

6. I have gone through the third reference report, which is placed on record at **“Annexure -D”** of the application. From the said report, it is very much clear that the product “Super Potash” had failed to meet the requirements for being classified as “Potash Derived from Molasses”. Thus, what was seized was not chemical fertilizer without any authority.

7. Moreover, M/s. Yashodhan Agro Services, Kagal has admittedly renewed the licenses. In view of above, the ad-interim protection given by this Court on 8th October, 2021 needs to be confirmed. Hence, the following order :

ORDER

- i) The application is allowed.

- ii) The ad-interim protection granted by this Court on 8th October, 2021 is confirmed and made absolute.
- iii) The application stands disposed of accordingly.

(V.G.BISHT, J.)