

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**CRIMINAL APPLICATION (ABA) NO. 118 OF 2021**

Deepak s/o Ramdeo Jaiswal

..vs..

State of Maharashtra, thr. P.S.O. and anr.

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri A.A. Naik, Advocate for applicant.  
Shri S.A.Ashirgade, A.P.P. for non-applicant no.1/State.  
Shri S.V. Purohit, Advocate for non-applicant no.2.  
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**CORAM : VINAY JOSHI, J.**

**DATED : 23/09/2021**

Registration of Crime No.23 of 2021 with the Police of Gondia City Police Station, District Gondia for the offence punishable under Section 135 of the Electricity Act, 2003, led the applicant to approach this Court for grant of pre-arrest protection in terms of Section 438 of the Code of Criminal Procedure.

2. The applicant was doing his business in the name and style of M/s. D.J. Microfined Minerals, MIDC, Mundipar. The applicant has obtained three phase high tension industrial connection for the business purpose. On 21.01.2021, the Executive Engineer of Maharashtra State Electricity Distribution Company Limited (MSEDCL) upon receipt of information, inspected the electric meter installed in the premises of the applicant. At the time of inspection, the applicant was present at his unit. A three phase meter bearing no.5036019 of HPL

Company was installed at the applicants' unit. Upon inspection, it was found that the said meter was tampered and therefore, it was seized under the Panchanama in presence of the applicant. The seized electric meter was sent to NABL Laboratory, Nagpur for testing. The electric meter was tested in presence of the applicant for which Panchanama was drawn.

3. It is alleged that on internal examination of meter, it was found that there was tampering of seals. Additional Printed Circuit Board (PCB) was attached in the meter. Moreover, there was additional CT connected to the PCB to control the function of the meter. Precisely, it was alleged that by way of tampering, the applicant has managed the functioning of the meter by which he reduced the electricity consumption resulting into a theft of electricity.

4. Learned Counsel for the applicant by denying the tampering would submit that it is very difficult to tamper the electric meter. He would submit that electric meters were placed in a Meter Cubicle with a Godrej ultra lock. A key of lock was only with the Superintending Engineer of the MSEDCL meaning thereby, the applicant cannot open the meter. It is submitted that the applicant never tampered with the meter and yet, it is to be proved in trial about the tampering of meter. Learned Counsel for the applicant has submitted that since the Electric Company has claimed a theft of energy and recovery of an amount

of Rs.49.57 lakh, he has filed Writ Petition No.963 of 2021 challenging the said action. It is brought to the notice that in said Writ Petition, by virtue of interim order the applicant has already deposited partial amount of Rs.20 lakh and furnished security for the rest amount. Besides that, learned Counsel for the applicant has produced electric bills for the period from April, 2018 to November 2020. He endeavoured to demonstrate that the electric consumption for the period preceding to the disputed period, was somewhat similar. He would submit that the applicant is a Managing Director of the Company. According to him, unless the applicants' role is specified and the Company is made accused, the prosecution is not tenable.

5. On the other hand, learned Counsel appearing for non-applicants in resistance submitted that the applicant has suppressed old antecedents. He took me through the bail application to contend that though in past, a similar crime was registered a misstatement to that effect was made. He would submit that in Writ Petition the applicant pleaded that it was a propriety concerned whilst in this bail application, he took a divergent stand that it is a Company. Besides that, learned Counsel for the non-applicant took me through the seizure Panchanama regarding the meter testing. He would submit that primarily, it reveals that at the time of testing, there was apparent tampering which was detailed in

Panchanama. The custodial interrogation is necessary to find the mode and manner in which the meter was tampered and to find the person who assisted him in the tampering.

6. Already the applicants' premises was inspected and concerned meter was seized in presence of the applicant by drawing Panchanama. Moreover, meter testing was already done. As regards to theft of energy is concerned, the said aspect is under challenge in Writ Petition and the applicant has already deposited 50% of claimed amount and provided security for the rest.

7. According to the prosecution, the period of theft was from October 2019 to January 2021. Learned Counsel for the applicant has produced electricity bills for the period from April, 2018 to November 2020. Perusal of the units consumed preceding to October 2019, it appears that there is no substantial change in the consumption. It is a matter of trial to establish the tampering and theft of energy.

8. The applicant is the permanent resident and having immovable property. The alleged offence attracts punishment which may extend to imprisonment up to three years. The purpose of investigation would be served, if the applicant is directed to join the Course of Investigation. This Court has already protected the applicant vide its interim

order dated 26.02.2021. Though the prosecution has stated that the applicant has not co-operated to the Investigating Agency, however the prosecution is unable to show that the applicant was called for the purpose of investigation. In view of the above, following order is passed :

- (a) The Criminal Application stands allowed.
- (b) Ad-interim order dated 26.02.2021 is hereby made absolute upon same terms and condition.

**JUDGE**

*Trupti*