

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [ABA] NO. 484/2021.

Nareshbhai Revabhai Patel

-VERSUS-

The State of Maharashtra, through P.S.O. Kelwad, Nagpur Rural, Nagpur.

CRIMINAL APPLICATION [ABA] NO. 486/2021.

Akhirajbhai Motibhai Patel

-VERSUS-

The State of Maharashtra, through P.S.O. Kelwad, Nagpur Rural, Nagpur.

CRIMINAL APPLICATION [ABA] NO. 494/2021.

Bharatbhai Pashabhai Patel

-VERSUS-

The State of Maharashtra, through P.S.O. Kelwad, Nagpur Rural, Nagpur.

CRIMINAL APPLICATION [ABA] NO. 534/2021.

Anoop Singh Chattar Singh Bhati

-VERSUS-

The State of Maharashtra, through P.S.O. Kelwad, Nagpur Rural, Nagpur.

CRIMINAL APPLICATION [ABA] NO. 345/2021.

Sohil Abdul Taslim Sheikh

-VERSUS-

The State of Maharashtra, through P.S.O. Chandrapur.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri Anil Mardikar, Senior Advocate with Shri R.V. Gahilot, Advocate for Applicants in ABA Nos. 484 & 486 of 2021.

Shri A.A. Dhawas, Advocate for Applicants in ABA Nos. 494 & 534 of 2021.

Shri M.V. Rai, Advocate for the Applicant in ABA No.345 of 2021.

Shri M.J. Khan, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : SEPTEMBER 03, 2021.

Heard.

2. First four bail applications i.e. A.B.A. Nos.484, 486, 494 and 534 of 2021 arise out of one and same crime,

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i.e. Crime No.94/2021 registered with the Non-applicant Kelwad Police Station, Nagpur Rural, District Nagpur for offence punishable under Sections 420 read with Section 34 of the Indian Penal Code, Sections 2, 7, 8, 15 and of the Environmental (Protection) Act, Sections 10, 11, 12, 13 and 14 of the Maharashtra Cotton Seed Act, 2009, Rule 10 of the Maharashtra Cotton Seed Rules and Sections 8, 9, 10, 11, 12, 13 and 14 of the Seeds Act, 1968. The fifth and last bail application i.e. A.B.A.No. 345/2021 arise out of Crime No.271/2021 registered with the non-applicant therein – Chandrapur Police Station for the offence punishable under Section 420 of the Indian Penal Code, Sections 15 of the Environmental (Protection) Act, Sections 3 and 7 of the Essential Commodity Act, Section 10 of the Maharashtra Cotton Seed Act 2009, Rules 7 to 14 of the Maharashtra Cotton Seed Rules.

Both the crimes are relating to similar offence, as well as all the submissions canvassed are some what similar, therefore, for the sake of convenience, all applications are taken up together for hearing and disposed of by this common order.

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3. All applicants prayed for grant pre-arrest protection by claiming innocence, false implication and inadequacy of material. Moreover, technical objection about the maintainability of the prosecution launched at the instance of police report, has been questioned. It is also submitted that since the stock of prohibited seeds was already seized, there is no need for custodial interrogation.

4. The State has resisted all applications by filing separate reply-affidavits. It is contended that applicants are the preparators of crime. With conscious knowledge, they have caused to transport prohibited cotton seeds. Applicants have posed that the seeds are of permitted quality, however, by misbranding prohibited seeds in huge quantity were manufactured and sent for distribution in the State of Maharashtra. Applicants are indulging into manufacturing, supply, transportation and sale of the prohibited HTBT cotton seeds. Custodial interrogation is necessary to find out the production unit, remaining stock of banned seeds, and information about the other accused, if any. In order to unfold the racket indulging into hazardous activities, interrogation is necessary. Considering the seriousness of the

offence and vast magnitude of distribution and sale of the prohibited seeds, State has prayed for rejection of all applications.

5. Agricultural Officer namely Chandrakant Wankhede lodged report on 27.05.2021 regarding the occurrence in Crime No.94/2021. Whereas in Crime No.271/2021 the report was lodged by the Agricultural Officer - Prashant Madavi. The officers claim to be authorized persons under the Seeds Act, Cotton Seeds Act and Rules framed thereunder. In respect of Crime No.94/2021, it is stated that on 26.05.2021 on receipt of secret information, regarding illegal transportation of prohibited HTBT Cotton seeds in huge quantity, the police intercepted a container bearing registration No. MH-40-N-495. Stock in huge quantity of banned HTBT cotton seeds was recovered and seized. From said vehicle total 11,100 seed packets worth Rs.1,05,13,700/- came to be seized. After seizure, samples were drawn in presence of panch witness and were forwarded to the Public Analyst for examination. The complaint bears reference of violation of various provisions of Cotton Seed Act and Environmental Protection Act.

In respect of Crime No.271/2021, on receipt of secret information on 01.05.2021, regarding illegal storing of prohibited HTBT Cotton seeds in huge quantity, the police searched one house and found stock in huge quantity of banned HTBT cotton seeds worth Rs.68,81,160/-, which came to be seized. After seizure, samples were drawn in presence of panch witness and were forwarded to the Chemical Analyst for examination. In this matter also, the complaint bears reference of violation of various provisions of Cotton Seed Act and Environmental Protection Act.

6. Heard learned Senior Counsel alongwith other respective Counsel for applicants and learned A.P.P. for the non-applicant State. Perused case papers. At the inception, the learned Senior Counsel and learned Counsel appearing for respective applicants have seriously questioned the maintainability of the prosecution launched by the police officer. In this regard, reference is made to the provisions of Section 9 of the Environmental Protection Act 1986, Section 15 of the Cotton Seeds Act 2009 and Rule 23[a] of the Seeds Rules, 1968. It is argued that there is complete bar for Court to take cognizance of the offence, except for a complaint

made in writing by an authorized person. Moreover, it is submitted that under Rule 23[a] of the Rules, a Seed Inspector is authorized to launch proceedings, after following the prescribed procedure. In support of said contention, reliance is placed on the decision in case of **Korra Srinivas Rao s/o Krishnamurthy .vrs. State of Maharashtra and others – 2002 [4] Mh.L.J. 368**. In the said case, this Court has observed that on a complaint of farmer regarding failure of crop due to defective quality of seed, the Seed Inspector can only launch prosecution after detailed investigation, but, police authorities cannot investigate. To respond the submission, the learned A.P.P. would submit that the ratio would apply only in cases where complaints are made by farmers regarding defective quality of seeds.

7. Applicants would submit that in case of violation of provisions of the Maharashtra Cotton Seeds Act, 2009 a complaint must be lodged by the authorized officer. In support of said contention, reliance is placed on following decisions – (1) **Maharashtra Hybrid Seeds Company Ltd. and another .vrs. The State of Maharashtra – Criminal Application No.4402/2013 decided on 03.03.2015**, (2) **Maharashtra**

Hybrid Seeds Company Ltd. and another .vrs. The State of Maharashtra – Criminal Application No.346/2015 decided on 07.04.2016, (3) Maharashtra Hybrid Seeds Company Ltd. and another .vrs. The State of Maharashtra – Criminal Application No.5256/2013 decided on 15.09.2014 and (4) Maharashtra Hybrid Seeds Company Ltd. and another .vrs. The State of Maharashtra and others – Criminal Application No.232/2013 decided on 16.01.2015. Moreover, reliance is also placed on the decision in cases of (1) Vilas Rambhau Majrikar .vrs. State of Maharashtra – Criminal Application No.1173/2010 decided on 22.06.2015 and (2) M/s. Ajeet Seeds Ltd. .vrs. State of Maharashtra and another – Criminal Application No.803/2018 decided on 27.03.2019, to impress that the prosecution is maintainable only on filing of a private complaint.

8. On the other hand, the learned A.P.P. has straneously argued that the bar would not apply, since prosecution is also under the provisions of the Indian Penal Code. He would submit that there is no bar for simultaneous prosecution under the Indian Penal Code along with other enactments. To support said contention, reliance

is placed on the decision of the Hon'ble Supreme Court in case of **State of Maharashtra and another .vrs. Sayyed Hassan Sayyed Subhan and others. 2018 AIR (SC) 5348.** The learned A.P.P. would submit that the Supreme Court had an occasion to consider the *parimateria* provision contained in Section 22 of the Mines and Minerals Act, relating to cognizance of offence. Placing reliance on the decision of Hon'ble Supreme Court in case of **State (NCT of Delhi) .vrs. Sanjay – (2014) 9 SCC 772,** he would contend that despite such provision under a special statute, there is no complete bar for taking action by the police for the offences under the Indian Penal Code.

9. I do not deem it necessary to deal with these submissions at the stage of deciding anticipatory bail applications. The applicant in Criminal Application No. 534/2021 has already approached to this Court for quashing of the proceedings by filing Criminal Application No.598/2021, which is pending for adjudication. Prima facie, it would suffice to say that different provisions for taking cognizance would apply for the action initiated under various Acts. However, in case at hand the action is also initiated

under the provisions of the Indian Penal Code. Moreover, complainants have claimed that they are authorized officers to file report. At this preliminary stage, said material is sufficient to decide applicants' entitlement for pre-arrest bail on the basis of factual aspect only.

10. The applicant – Nareshbhai Patel (ABA No.484/2021), claims that he is doing separate Ginning and Pressing business, which has no concern with Vishwas Agro Tech. According to him, the co-accused Akherajbhai Patel is the sole proprietor of a different concern having similar name. In short, he denies his nexus with Vishwas Agro Tech, who has dispatched the prohibited stock of seeds.

It is submitted on behalf of applicant – Akherajbhai (ABA No.486/2021), that he is engaged in the business of sale of cotton. It is submitted that the seized seeds were manufactured by one Narmada Sagar Agro Seeds Ltd. His proprietary concern - Vishwas Agro Tech was only marketing the seeds in the State of Maharashtra. It is further submitted by applicants – Akherajbhai and Nareshbhai, that though huge stock of seeds was seized, however, Vishwas Agro Tech has sold only 300 bags to one Omkar Krushi Kendra,

Bhadrawati. They have no concern with the remaining seized stock. These applicants have produced registration certificate of Vishwas Agro Tech, a proprietary concern in the name of Akherajbhai Patel. Likewise another registration certificate in the name of the same firm Vishwas Agro Tech, was produced, which shows that both Akherajbhai and Nareshbhai are partners. Prima facie, it appears that on different address both applicants were jointly doing the business from same establishment by using similar name. Perusal of case diary also indicate that both applicants are concerned with Vishwas Agro Tech, which is also a seed manufacturing unit.

11. Applicants have also produced invoice in the name of Vishwas Agro Tech, which bears reference that it is a Seed Production and Marketing concern, therefore, their prima facie involvement is evident. The report of the Public Analyst dated 14.06.2020, was received by the investigating officer. The result of the examination is that the seized material was banned, being detrimental to soil and environment. The seized material is known as "HTBT" quality, which is prohibited one. The percentage was found to be positive. Apart from the technicalities, it would suffice to say that as

per the Public Analyst report, the seeds seized by the police in huge quantity, were totally prohibited and harmful for use. It would have adverse impact on the environment. It reveals from the papers that BT and HTBT cotton seeds are prohibited by the Central Government due to its health hazardous contents to the farmers and loss of fertility to land by its use.

12. Applicant Bharatbhai (ABA No.494/2021), would submit that he has no concern with the alleged seizure. Due to similarity of his name with “Bade Bharatbhai”, he is falsely implicated in the present case. It reveals from the case papers that the applicant Bharatbhai was having nexus with applicants – Akherajbhai and Nareshbhai. He has send the prohibited seeds through applicant Anoopsingh Bhati for sale. The police have collected call details of Bharatbhai to show that while the goods were being transported, he was continuously in touch with the co-accused Anoopsingh.

13. Applicant Anoopsingh Bhati (ABANo. 534/2021), claims to be a mere transporter of goods. It is his contention that he has no concern with the prohibited goods. Prima facie it is revealed from the police papers that he was knowing the

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nature of goods and was continuously monitoring the goods while in voyage. Moreover, call details, as referred above also shows that the applicant Anoopsingh was also monitoring the transportation of goods with conscious knowledge.

14. The learned A.P.P. has submitted that while the applicant Anoopsingh was on interim bail, as a condition of bail, he was directed to attend the police station to facilitate investigation. Pertinent to note that the prosecution has specifically raised a grievance that the applicant Anoopsingh never attended the police station, nor had cooperated in the investigation. It is also brought to the notice of the Court, that under the pretext of hospitalization, the applicant Anoopsingh avoided to attend police station, however, on enquiry it was found that he was never hospitalized for any treatment in the hospital. Certainly this conduct on the part of this applicant assumes significance.

15. The investigation paper reveals that the police team has visited Vishwas Agro Tech. It was learnt that Vishwas Agro Tech was run by Akherajbhai and Nareshbhai as a partnership concern. Carbon copies of bills were also seized from Vishwas Agro Tech. Learned A.P.P. has

submitted that while transporting the goods, fabricated receipts [bilty] was prepared posing that the goods were of spinach seeds. It is pointed out that wrappers of the pouches contain name of Vishwas Agro Tech, as a marketing agency.

16. As regards to Criminal Application No.345/2021, it is the prosecution case that on receipt of secret information, police raided the premises of the applicant. During search, huge quantity of packets containing prohibited HTBT cotton seeds were seized. Moreover, the police also found loose stock of prohibited cotton seeds stored in bags. The entire prohibited seeds were worth Rs.68,81,160/-. During investigation police recorded statement of owner of the premises from which it is revealed that the applicant took the said premises on rental basis and had stored the goods. Moreover, it was revealed that the applicant was packing the loose seeds into packets. The said material prima facie indicates the complicity of applicant regarding his specific role of storing prohibited goods in huge quantity. Not only packed material was found, but, prohibited goods were found in loose quantity, which is serious one. The investigation is needed to trace the origin of the manufacture of the goods

and about its distribution. The applicant would be only in a position to divulge those during the course of investigation.

17. Learned Senior Counsel appearing for applicants would submit that mere seizure of prohibited articles does not amount to an offence of cheating. In order to specify the essential ingredients to constitute an offence of cheating, reliance is placed on the decision of Hon'ble Supreme Court in case of **Mohammed Ibrahim and others .vrs. State of Bihar and others (2009) 8 SCC 751**. As against this, the learned A.P.P. by placing reliance on the judgment of Hon'ble Supreme Court in case of **Rajesh Bajaj .vrs. State NCT of Delhi and others - 1999 AIR (SC) 1216**, would submit that from the very deceptive intention of applicants, the offence of cheating would attract. It is also submitted that the offences punishable under Sections 468 and 471 of the Indian Penal Code would also attract.

18. Prima facie it is evident that a huge stock of prohibited seeds came to be seized. From the public analyst report, it is evident that seized seeds was the prohibited HTBT cotton seed having herbicide tolerant and their germination percentage was also not as per the approved

standards. It is revealed that there was misprinting about the quality. Though it was not complained by any farmer, however, the fraudulent and dishonest intention can be gathered from the act itself. Seizure of huge stock prima facie indicates that it was being transported for distribution and sale. The said act may amount to an conscious attempt of cheating.

19. Besides that, wrappers were produced before the trial Court as well as brought to this Court for inspection to show that with deceitful means, it was labeled as an approved quality. It is undeniable that HTBT cotton seeds are dangerous and hazardous. Prima facie the report of public analyst affirms about the banned quality. Holding licence for sale of approved quality goods and sale of prohibited articles under the guise of approved licence, are two different aspect. There are allegations that the wrappers have also been misprinted to deceive buyers. Prima facie it reveals that the banned seeds having impact on the farming sector, has been brought in the State obviously for sale. The investigation is needed in various dimensions like its production unit, modus operandi, seizure of remaining stock, seizure of

manufacturing material, connection of other accused in supplying prohibited goods etc. custodial interrogation would only reveal about ownership of remaining seized stock. In case of like nature, the investigation is necessary from various angles, which cannot be predicted at this stage. Certainly by custodial interrogation of applicants, the investigating agency would be in position to reach to the truth. Considering the calculated act of manufacturing and distributing banned seeds for monetary gain, protection cannot be granted. The alleged act is having far reaching effect on the health, environment and farming sector. Therefore, judicial discretion can not be exercised in such serious cases. In view of that, all applications stand rejected.

20. At this stage, the learned Counsel for applicants prays for continuation of interim protection so as to enable them to approach the Hon'ble Supreme Court. Interim protection to continue for a period of two weeks from today. Needless to mention that the same shall automatically cease to operate thereafter.

Rqd.

JUDGE