

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

CRIMINAL WRIT PETITION NO.599 OF 2021

Shakeel Ahmad Mohd. Sabir Ansari
Aged about 62 years, Occ: Business,
R/o Behind Khushbu Motors,
Kalamna Road, Yerkheda,
Kamptee, Dist. Nagpur. **PETITIONER**

...V E R S U S...

State of Maharashtra, through
Poliuce Station Ramtek,
Dist. Nagpur. **RESPONDENT**

Mr. J. M. Gandhi, Advocate for Petitioner.
Mr. N. S. Rao, APP for Respondent/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **16th SEPTEMBER, 2021.**

ORAL JUDGMENT:

Heard.

2. Rule.

3. With consent, the petition is finally heard.

4. The short submission of the petitioner is that while granting pre-arrest bail, the learned Additional Sessions Judge, Nagpur directed the petitioner – accused to deposit 50% of the

amount of 'theft' of electricity, which is Rs.4,84,275/- (Rupees Four Lakh Eighty Four Thousand and Two Hundred Seventy Five only).

5. The condition, to which serious objection is taken, is imposed while granting pre-arrest bail in connection with offence punishable under section 135 of the Indian Electricity Act and the submission is twofold. The first submission is that the learned Additional Sessions Judge fell in error in assuming, and rather pre-judging, that the petitioner is involved in theft of electricity, without there being any adjudication and the other submission is, that in any event, the condition imposed while granting pre-arrest or even regular bail must have nexus with the legislative intent underlying section 438 or section 439, as the case may be. The extension of the submission is, that the Court cannot act as a recovery or executing court nor can the condition be so onerous as would render the right to bail illusory.

6. I am in complete agreement with the twin submissions. The State has filed an affidavit in response fairly conceding to the position of law in view of the plethora of decisions of the Supreme Court, *inter alia Dilip Singh v. State of*

Madhya Pradesh and another (2021) 2 SCC 779.

7. The condition imposed is unsustainable and is quashed.

8. The petition is allowed in terms of prayer clause (i) which reads thus:

- i. issue appropriate writ, order or direction directing the modification of the order passed by the Learned District Judge-3 & Addl. Sessions Judge, Nagpur on 10.08.2021 at ANNEXURE-3 by deleting the direction to deposit the 50% of the amount of alleged theft of electricity of Rs.4,84,275/- with the MSEDCL, Ramtek, Dist: Nagpur within 15 days from the date of order failing which the order would become inoperative and to maintain the rest of the order as it is.

9. Rule is made absolute in the aforestated terms.

JUDGE