

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.127 OF 2022

MANIKANTHA NARENDRA RATHOD AND ANOTHER
VERSUS
STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. P. S. Mantri h/f Mr. P.V.Barde
APP for Respondent-State : Mr. A. M. Phule

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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving the Order :
21-02-2022**

**Date of Pronouncing the Order :
04-05-2022**

ORDER :

1. The applicants are apprehending their arrest in connection with Crime No.341 of 2021, registered with Omerga Police Station, District Osmanabad, for the offence punishable under Section 3, 7 of Essential Commodities Act and Section 285, 287, 336 r.w.34 of I.P.C.
2. Heard learned Advocate Mr. P. S. Mantri holding for Advocate Mr. P. V. Barde for applicants and learned APP Mr. A. M Phule for respondent-State.
3. It has been vehemently submitted on behalf of the applicants

that the applicants are respected industrialists, and therefore, there is no question of getting them absconding. In fact, notice under Section 41-A of the Cr.P.C. was served on the applicants and the applicants had appeared before the police authorities on 27-09-2021 and had produced documents as required by them. They had also sent those documents through RPAD to the police on 30-09-2021. As per the prosecution story, diesel like substance measuring 12,000 liters in a big container to which the electric motor was installed and also another machine, in all entire property worth Rs.13,53,000/- came to be seized from the rice mill which is being conducted by the present applicants. It is to be noted that the applicants have produced on record tax invoice of base oil which they had purchased. They have also produced the E-Way bill. It was a legal purchase by them and it cannot be termed as bio diesel which the applicants want to canvass. The custodial interrogation of the applicants is not necessary and they are ready to abide by the terms of the bail.

4. The learned APP has strongly opposed the application and submitted that though licence may not be required, for bio diesel under Section 7 of the Petroleum Act, yet taking into consideration

the definition of a petroleum product in Section 2-C of the Petroleum Act to be read together with Section 7 of the said Act and Rule No.4 of the said Act for storage the licence would be required and the applicants were found storing a huge quantity of diesel like substance. No precautionary measures appear to have been taken and the petroleum products are highly inflammable. Therefore, the discretionary relief need not be given to the applicants.

5. At the outset, it is to be noted that the FIR which has been filed by police officer Chaitanya Kongulwar attached to SDPO Office, Omerga, raid was conducted on the basis of some secret information and at that time all these articles appear to have been seized. By taking sample of petroleum products, the products were seized and the samples was sent for Chemical analysis. The police papers show that in all four samples were sent and the result of the analysis is, "all of them were petroleum hydrocarbon oil," and the specific gravity has been given. Now whether it is a scheduled product which was not allowed to be stored will have to be considered by the Trial Court. According to the applicants it was the base oil required to run rice mill. The rice mill licence by Food and Safety Standards Authority of India have been produced on record. Conditions of

licence are also produced and the tax invoice in respect of base oil and "GTL LP" has also been produced. Even if for the sake of arguments we accept that it was a petroleum product, yet entire material was seized on the spot and now nothing is required to be seized from the applicants. Another fact to be noted is that Section 3 of Essential Commodities Act actually deals with powers to control production to supply distribution etc. of the Essential Commodities Act. It is not a punishable section but the violation of the same is made punishable under Section 7. Section 7 (1) provides for contravention of any order made under Section 3 would be punishable with imprisonment for a term which may extent to one year and payment of fine if it is first offence. At this stage there is nothing on record to show that the present applicants were held guilty at any earlier point of time under the Essential Commodities Act. Therefore, taking into consideration the punishment provided and the ratio laid down in *Arnesh Kumar vs. State of Bihar, reported in 2014(8) SCC 273*, it appears that notice under Section 41-A of Code of Criminal Procedure was given to the applicants, they had appeared before the Investigating Officer and when they are co-operating with the investigation, their arrest and custodial interrogation may not be required. Therefore, the interim protection

granted to the present applicants on 03-02-2022 deserves to be confirmed, accordingly it is confirmed. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) The interim protection granted to the applicants by this Court on 03-02-2022 is hereby confirmed. In other words, in the event of arrest of the applicant No.1 Manikantha Narendra Rathod and applicant No.2 Mahesh Piraji Gawali, in connection with Crime No.341 of 2021, dated 25-06-2021, registered with Omerga Police Station, District Osmanabad, for the offence punishable under Section 3, 7 of the Essential Commodities Act and Section 285, 287, 336 r.w.34 of IPC, they be released on P.R.Bond of Rs.50,000/-each with two solvent sureties of Rs.25,000/- each.
- 3) They shall not tamper the evidence of prosecution in any manner.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.