

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.148 OF 2021

DILIP @ POTAT NAMDEO SOLANKAR
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. P. K. Deshmukh
APP for Respondent-State : Mr. V. M. Kagne
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 21-01-2022.

ORDER :

1. Present applicant is apprehending his arrest in connection with Crime No.309 of 2020, registered with Dhoki Police Station, Taluka and District Osmanabad, for the offence punishable under Section 420, 464, 465, 468, 471 of the Indian Penal Code.
2. Heard learned Advocate Mr. P. K. Deshmukh for applicant and learned APP Mr. V. M. Kagne for respondent-State.
3. It has been vehemently submitted on behalf of the applicant that the applicant has been falsely implicated. The FIR has been lodged by Naib Tahsildar Mr. Rajaram Iranna Kelurkar who was directed to file the FIR. It alleges that the fair price shop was allotted in the name of Chairman, Vivid Karyakari Seva Society Limited, Dautpur, Taluka and

District Osmanabad. However, the applicant is illegally and without permission running the said business since 2013. The said fact could be revealed only during the final inquiry ended on 27-07-2020. It has been further submitted that the applicant has prepared false and bogus proceeding of Vivid Karyakari Seva Society Ltd., Dautpur that the licence holder i.e. the society has appointed the applicant as salesman and the applicant without any authority has drawn the grains which were supplied by the government for distribution through the fair price shop since 2013. The applicant has not committed any offence but the FIR is the result of the political rivalry. He was Sarpanch of village Dautpur and also the member of the said society. In fact, the constituted body of the society had passed the resolution and appointed the applicant as salesman for the fair price shop to be run by the society itself. The applicant has withdrawn the food grains from the Tahsil Office by depositing the price of the grains and then distributed to the ration card holders attached to the shop of the society. No complaint has been made by the ration card holders regarding the supply of the grains. The applicant has not conducted the said business, but the business has been conducted through him by the society, therefore, there is no question of cheating anybody. When it is stated that he was taking

the supply of the grains from Tahsil Office since 2013, nobody had noticed the alleged irregularity or illegality. The inquiry in respect of fair price shop was initiated on 04-01-2020 which is much after a belated period. In the inquiry, the present applicant and the other concerned persons were present on each date and the secretary of the society had produced the original resolution dated 30-06-2015, wherein it was stated that before the said resolutions when the fair price shop was given to applicant as salesman, but he has no knowledge about it. The secretary had supplied the copy of the resolution of the year 2013 to the applicant but noting of the same was not taken in the proceeding book, and therefore, now it is said that the applicant had run the shop without any authority.

4. It has been further submitted that the resolution dated 30-06-2015 would show that the society had the licence to run the fair price shop but for the society it was not viable, and therefore, the applicant was allotted with the shop on furnishing security bond that he should run the shop. The applicant would pay the funds for running the shop and also maintain the record of the fair price shop. It was then resolved that the applicant would deposit the profit from the fair price shop to the society. The applicant has not received

any wrongful gain nor the society has come forward with an allegation that there is wrongful loss to the society, and therefore, no question of invoking the offence punishable under Section 420 of the IPC arises. The applicant is ready to abide by the terms of the bail.

5. Per contra, the learned APP strongly opposed the application and submitted that the cheating is to the Government and there is no question of cheating to society. In fact, the fair price shop licence was given to the society which could not have been transferred or any way a third party interest could have been created. The society persons were the only persons who could have drawn the grain from the government which was meant for distribution through public distribution system. The applicant was running the said business since 2013 without any authority and when he was directed to produce the resolutions, he produced the document, however, there was no corresponding entry to the proceeding book maintained by the society. Inquiry was conducted by the revenue officers in view of the fact that somebody else is running the shop. Ultimately in the said inquiry report dated 27-07-2020, it could be revealed that the present applicant by posing

himself as the salesman of the society, had withdrawn the grains from the government. Statements of witnesses have been recorded, which include the secretary of the society. Since 2013 one Sudhakar Thorat is the secretary. He has stated that there is no record available with the society as to since when the present applicant is running the fair price shop. However, elections for the society were held on 10-05-2015 and in that the present applicant became the director, and it was resolved by resolution No.2 dated 30-06-2015 that the fair price shop should be given to the present applicant. He conducted the affairs of the shop till 2019, however, thereafter the board of directors were removed by the Sub-Registrar, Osmanabad and administrator was appointed. Similar statements have been given by the other persons from the same village. Statements of revenue officers, especially Awal Karkun and Ware-House Keeper have been recorded to show that the present applicant has taken the grains since 2013. The custodial interrogation of the applicant is necessary as he possess the documents, and also it is required to be revealed, as to how much grains were taken by him and where he has spent the amount.

6. It is to be noted that the FIR has been lodged by Naib

Tahsildar after the conclusion of the inquiry. The inquiry papers are made available to the Investigating officer wherein it appears that opportunity was given to the present applicant to produce the documents in his favour. Though document was stated to have been produced stating that by resolution dated 30-06-2015 the society has given the shop for conducting the affairs to the present applicant, yet the other documents would show that since 2013 the present applicant was drawing the grains from the government, which was meant for distribution through public distribution system. The applicant could not produce any licence or authority to show that since 2013 he was authorized by the society to run the business. The applicant is accepting that he was running the business and it was on the basis of resolution that was passed. However, we cannot get any account of the period 2013 to 2015. Even as regards the resolution which is stated to have been passed in 2015, it is to be noted that the applicant himself was stated to be one of the director. Question then arises as to how the society could independently give the work of running the business to one of the director under the pretext that the said business is not viable to be run by the society. Whether such assignment could be said to be legal in view of the rules and regulations under which licence to the

fair price shops are granted. Secondly, the applicant has not produced on record any evidence which could show that whatever profit he had derived from the society, he has deposited in the account of society. He has not produced any such record before this Court to show that he had maintained the accounts of the fair price shop. When the applicant wants that this Court should exercise its extraordinary powers, then he should come with clean cards and produce on record what he has done, then only there could be satisfaction by this Court to know that certain act has been done by the applicant and for which he would co-operate with the investigation and would remain present before the Investigating Officer for that purpose. The applicant has failed to establish that confidence in the mind of this Court, and therefore, extraordinary powers cannot be exercised in favour of the applicant. Application, therefore, stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-