

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1189 OF 2022
WITH APPLN/3240/2022 IN ABA/1189/2022

DAYANAND BALASAHEB SALUNKE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. P. P. More
APP for Respondent : Mr. S. B. Narwade
Advocate for Complainant : Mr. Pratap Vikhe Patil h/f.
Mr. S. J. Salunke
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CORAM : S. G. MEHARE, J.

DATE : 29-09-2022

PER COURT:-

1. Heard the learned counsel for the applicant, the learned A.P.P. for the respondent/State and the learned counsel appearing for the complainant.

2. The applicant is a Trader in grains, and he used to purchase Soybean from the agriculturists and sale to the complainant company. It is not in dispute that 2Kg.soil per quintal is acceptable. It has been alleged that disproportionate soil was mixed in each bag of Soybean to the extent of 20 to 23 kg. per quintal. It has been alleged that the applicant, in conspiracy with the employee of the complainant, was adulterating the soil to such a great extent for the last six months. It has been alleged that the applicant has put the loss to the company for Rs.3,57,000/- to

Rs.4,00,000/-. On the report of the complainant, the offence was registered for the offences punishable under sections 406 and 408 of the Indian Penal Code.

3. The learned counsel for the applicant has vehemently argued that before accepting the delivery of goods by the trader to the company, it was the duty of the company or its employee to verify the quantity and quality of the goods supplied. He would submit that it is beyond imagination to mix soil of 20 to 22 Kgs. per quintal. Such a huge quantity of soil, if mixed, could be noticed by the naked eye. The quality of the goods supplied was checked at various levels. The employees of the complainant company were doing this job while receiving the delivery of grain every time. For the first time, the complainant got suspicious about mixing a high quantity of soil in the Soybean supplied by the applicant. The company of complainant has a misconception about the applicant, who is a new entrant in the business.

4. The learned counsel for the applicant also argued that the truck in which the Soybean was supplied had been seized and is with the police. The applicant has a simple business of purchasing Soybean from the agriculturists, loading them from the spot and directly deliver to the company, where the Soybean used to be checked as per routine practice. At no point in time the objection was raised by the company that the soil was mixed more than margin. The applicant is not a producer of soybeans. He only does

the business of purchasing the grains from the agriculturists. As soon as the purchaser finds the inferior quality, he has every right to reject the grain and refuse the delivery. It did not happen any time before, and for the first time, it happened that the complainant did not accept the grains. He has vehemently argued that it has been alleged that in conspiracy with the employee of the complainant, a criminal breach of trust has been committed. Referring to Section 406 of the IPC Penal Code, he has vehemently argued that Sections 406 and 408 of the IPC would not attract since he is not an employee of the complainant and has not breached the trust. The employees allegedly involved in the activities are still working with the company. They were the best source to know about the quantity of soil in each soybean bag. The company must have crushed the earlier Soybean, and there were no complaints. Therefore, nothing has to be recovered from him.

5. The learned A.P.P. has vehemently argued that there are statements of the witnesses supporting allegations levelled against the applicant. The company has suffered a huge loss due to the acts committed by the applicant in conspiracy with the staff. The staff has admitted the fact. Though Section 406 of the IPC is applied, it may be an offence punishable under Section 420 of the IPC. These activities have been going on for the last many months. Therefore, to know how often such illegalities have been committed, the custodial interrogation of the applicant is essential.

6. The learned counsel for the complainant has vehemently argued that it is a planned conspiracy putting a huge loss on the company. The applicant, in conspiracy with the staff, was doing illegal business and thereby committed the breach of trust of the company. Therefore, the custodial interrogation of the applicant is essential.

7. Perused the papers produced by the learned A.P.P. It is true that till the present incident, there were no complaints against the applicant that he was adding a disproportionate quantity of soil in each bag. The applicant's business was very simple to purchase the agricultural produce from the agriculturists, load it in the truck and directly supply it to the complainant/company. Therefore, the purchaser was to examine the quantity and quality. This appears to be a solitary incident where the company got suspicious of mixing huge soil. Since the company found huge soil in bags, it has not accepted it. If the delivery is not accepted before accepting the offer is not a contract. Exactly the same thing happened in this case. The prosecution has no evidence that such a huge quantity of soil was mixed in the Soybean supplied by the applicant ever before. The statements of the employees may be restricted to them. The truck in which the last goods were supplied has been seized and lying with the police. Considering the allegations levelled against the applicant, it is very difficult to

believe the allegations made by the complainant against the applicant at this juncture. Considering the nature of business transaction, no purpose would be served if the applicant is asked to face the custodial interrogation. Hence, the following order:-

- i) The application is allowed.
- ii) In the event of arrest, applicant Dayanand Balasaheb Salunke, be released on bail, on furnishing PB and SB of Rs.25,000/- with one solvent surety of the like amount, in C.R.No.0438 of 2022 registered with MIDC Police Station, Taluka and District Latur, for the offences punishable under Sections 406 and 408 of the Indian Penal Code, on the condition that the applicant shall attend the police station as and when called by the Investigating Officer on written notice.
- iii) Criminal Application No.3240 of 2022 is allowed.

**(S. G. MEHARE)
JUDGE**

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