

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1310 OF 2021

RAJENDRA S/O BAPURAOJI GULKARI
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. G. P. Shinde and Mr. S. P. Gude, Advocate for applicant.
Mrs. Vaishali Patil Jadhav, APP for the respondent – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 01.03.2022

ORDER :-

. The applicant is apprehending his arrest in connection with Crime No.117 of 2020 registered at Shirur Anantpal Police Station Dist. Latur for the offences punishable under Sections 420 of Indian Penal Code and under Sections 6(b), 7(b) of Seeds Act and Rule 23(a)(2), 23(B) of the Seeds Rule.

2. Heard learned Advocate Mr. G. P. Shinde for the applicant and learned APP Mrs. Vaishali Patil Jadhav for the respondent – State. In order to cut short it can be said that both of them have made submissions in support of their respective contentions.

3. At the outset, it is to be noted that the present applicant has been stated to the responsible person of M/s. Saras Agro Industries. Perusal

of the FIR would show that though the present applicant has been said to be the responsible person of the said company, but the complaint is against the company. The FIR has been lodged by one Sahebrao Aade, who is Agriculture Officer. He was appointed as Secretary to the Complaint Redressal Committee of the Government with whom the farmers were allowed to lodge complaint. M/s. Saras Agro Industries, Khandwa, Madhya Pradesh, was the manufacturer and supplier of Soyabin seeds and complaints were received by the Committee that there was no germination of those seeds. Thereafter, samples were taken by drawing panchanama. When the germination capacity should be 70%, the sample showed it as 10.09 to 28.63%. Because of the non germination of seeds, the farmers were required to sow the seeds once again and thereafter, the Division Bench of this Court under Suo Moto Public Interest Litigation gave directions to lodge criminal complaints and accordingly, the said informant has lodged the report.

4. Thus, perusal of the contents of the FIR would show that the offence was, in fact, against the company, wherein the applicant was serving as a responsible person. It appears that the informant had not considered the duty list of the applicant before lodging the report. It will not be out of place to take note of provisions of Section 63 of the Code of Criminal Procedure, which prescribes for service of summons on

corporate bodies and societies. Service of a summons on a corporation may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the corporation in India, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post. Further, note will have to be taken in respect of Section 305 of the Code of Criminal Procedure, which prescribes procedure when corporation or registered society is an accused. The said Section need not be reproduced here, but the relevant provision would be 305(2) and 305(3) of the Code of Criminal Procedure. It requires that when the Corporation is an accused or one of the accused, then it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seat of the Corporation. All the acts done by the said representative would bind the Corporation. This provision especially takes into account the fact that the corporation has no bodily appearance, therefore, if anything was done by the Industry, then the Corporation can be said to be the accused in this case and not the representative or responsible person in his personal capacity. Merely because the name has been mentioned, he is required to approach this Court. Otherwise it would have been a FIR against Corporation. This Court is of the opinion that there was no

necessity for the applicant to approach this Court under Section 438 of the Code of Criminal Procedure, but it is to be noted that this circumstance was not noted by the learned Additional Sessions Judge, before whom the applicant had approached by filing Criminal Application No.82 of 2002. The said application came to be rejected on 21.09.2021 by learned Additional Sessions Judge, Nilanga. Further, it appears that though three decisions of this Court were cited on behalf of the applicant before the learned Judge, but they have been not considered stating that they are not applicable to the facts of the case. In fact, the facts are almost similar. This Court is not sitting as an Appellate Court, but now this Court is exercising concurrent jurisdiction under Section 438 of the Code of Criminal Procedure.

5. The fact will have to be noted that Hon'ble Apex Court in Special Leave Petition (Criminal) Diary No.13972 of 2020 by order dated 20.07.2020 has stayed the order passed in Suo Moto Public Interest Litigation by the Division Bench of this Court. This Court has also expressed in the past, in other orders of similarly situated persons, that taking into consideration the contents of the FIR, it is doubtful as to whether Section 420 of Indian Penal Code can be attracted when the FIR is lodged by Government servant and not by the farmer directly. Even if it is taken that the criminal law can be set in motion by anybody, but still

whether non germination of seeds, which could not have been predicted by anybody, would lead to cheating. At the most, the other Sections may be pressed into service, but they are bailable offences.

6. The learned Advocate appearing for the applicant has relied on the decisions of this Court in ***Radheshyam s/o Mangilal Patidar Vs. The State of Maharashtra***, (Anticipatory Bail Application No.795 of 2020 decided on 16.12.2020), ***Chandrakant s/o Vasant Wani Vs. The State of Maharashtra***, (Anticipatory Bail Application No.1129 of 2020 decided on 16.12.2020), ***Dagadu s/o Nanabhau Ambhore Vs. The State of Maharashtra***, (Anticipatory Bail Application No.1151 of 2020 decided on 16.12.2020), ***Hansraj Balmukund Bansal Vs. The State of Maharashtra***, (Anticipatory Bail Application No.1177 of 2020 decided on 05.02.2021), ***Rajendra Bapurooji Gulkari Vs. The State of Maharashtra***, (Anticipatory Bail Application No.251 of 2021 decided on 03.07.2021), ***Sandip s/o Machindra Baviskar Vs. The State of Maharashtra***, (Anticipatory Bail Application No.532 of 2021 decided on 07.09.2021), ***Rajkumar Maruti Babar Vs. The State of Maharashtra***, (Anticipatory Bail Application No.615 of 2021 decided on 03.07.2021), ***Rajkumar s/o Maruti Babar Vs. The State of Maharashtra***, (Anticipatory Bail Application No.660 of 2021 decided on 09.09.2021), wherein similarly situated persons have been granted anticipatory bail. In this case also, the applicant deserves to be

released on anticipatory bail. The ad-interim protection granted earlier by this Court granted to the applicant vide order dated 21.01.2022 deserves to be confirmed. Hence, the following order :-

ORDER

- I) Application stands allowed.
- II) The ad-interim protection granted earlier by this Court on 21.01.2022 stands confirmed and made absolute. In other words, in the event of arrest of the applicant – Rajendra Bapuraoji Gulkari in connection with Crime No.117 of 2020 registered with Shirur Anantpal Police Station, Dist. Latur for the offence punishable under Section 420 of the Indian Penal Code, under Sections 6(b), 7(b) of the Seeds Act and Rule 23(a)(2), 23(B) of the Seeds Rule, he be released on P.R. Bond of Rs.30,000/- and two solvent sureties of Rs.15,000/- each, if not already released.
- III) The applicant shall not indulge in any criminal activity nor shall try to tamper with the evidence of prosecution, in any manner.
- IV) He should remain present before the Investigating Officer on every Saturday between 10.00 a.m. to 2.00 p.m., till filing of charge-sheet.

[SMT. VIBHA KANKANWADI, J.]