

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.1312 OF 2021

Shivaji S/o Shankar Kakade

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
- 2) The Superintendent of Police,
Ahmednagar,
- 3) The Police Station Incharge,
Police Station, Shevgaon,
Taluka-Shevgaon, District-Ahmednagar.

...RESPONDENTS

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Mr.Amol Kakade Advocate h/f. Ganesh P. Darandale
Advocate for Applicant.

Mr.A.M. Phule, A.P.P. for Respondent Nos. 1 to 3.

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CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 19th JANUARY 2022

DATE OF PRONOUNCING ORDER : 11th FEBRUARY 2022

ORDER :

1. Applicant is apprehending his arrest in connection with
Crime No.575 of 2021 registered with Shevgaon Police Station,

Taluka-Shevgaon, District-Ahmednagar for the offence punishable under Sections 3 and 7 of the Essential Commodities Act.

2. Heard learned Advocate for the applicant and learned APP for the respondents.

3. It has been vehemently submitted on behalf of the applicant that the applicant is a supplier of Government approved cheap grain store (fair price shop) since last seven years. There was no complaint regarding the distribution of grain by him. In fact the said fair price shop of village Balam Takali was allotted to one Swami Vivekanand Patsanstha, however, present applicant is running the said shop on behalf of the said Patsanstha as per the directions given by Tahsildar, Shevgaon, District-Ahmednagar. First Information Report has been lodged by Supply Inspector – Vijay Bapurao Chavan stating that on the complaint received, a delegation was sent at about 3.14 p.m. on 11th September 2021 to the shop of the present applicant. Mob of 200 to 250 people was gathered and it was then stated that the persons who had made complaint, namely, Shekhar Babasaheb Bamdale and Digambar Dattatraya Popalghat were

present. They had made video-shooting in respect of a private tempo bearing No.MH-16-CA-0604, from which people were seen taking out gunny bags filled in with rice and wheat. Thereafter an inquiry was held and the facts were compared with the on-line sale report. It was found that eleven gunny bags were less and distribution was not made in respect of 24 gunny bags of rice though in respect of rice and wheat the thumb marks of the beneficiaries were taken on the machine. It is submitted on behalf of the applicant that physical custody of the applicant on the basis of this complaint, is not necessary and the applicant is ready to abide by the terms of the bail.

4. Per contra, the learned APP strongly opposed the application and submitted that the present applicant is absconding. The tempo used in the commission of offence is yet to be recovered. Inquiry is required to be made whether the applicant has sold the food grains in open market when it was meant for distribution through fair price shop.

5. At the outset, it is to be noted that the punishment that is provided under Section 7 of the Essential Commodities Act for the violation of the provisions under Section 3 of the Essential

Commodities Act is one year. For that purpose, whether the physical custody of the applicant is necessary, is a question. It appears that 24 gunny bags and 50 Kg. rice and also 3 separate bags of rice, each around 15 to 20 Kg. were found to be undistributed and therefore the same were handed over to the applicant by the informant himself on 11th September 2021 when he had paid visit to the shop. Informant is relying upon the video recording done by some private person. In fact its authenticity ought to have been checked first and then further action ought to have been taken. There might be some misdeeds, but for that purpose whether physical custody is necessary, is a question and this Court is of the opinion that the physical custody of the applicant is not required. The investigation can still go on if the attendance is directed to be given. With these reasons, following order is passed:

ORDER

- i) Application stands allowed.
- ii) In the event of arrest of the applicant – Shivaji S/o Shankar Kakade in connection with Crime No.575 of 2021

registered with Shevgaon Police Station, Taluka-Shevgaon, District-Ahmednagar for the offence punishable under Sections 3 and 7 of the Essential Commodities Act, he be released on bail on PR Bond Rs.30,000/- (Rupees Thirty Thousand) with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand) each.

iii) Applicant shall attend Shevgaon Police Station on every Sunday between 11.00 a.m. to 2.00 p.m. till filing of the charge-sheet and co-operate with the investigation.

iv) Applicant shall not tamper with the evidence of the prosecution in any manner.

[SMT. VIBHA KANKANWADI , J.]