

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

CRIMINAL WRIT PETITION NO.1318 OF 2021

Shahid s/o Ismail Shaikh
Age 37 years, Occu. Business,
R/o Gandharvnagari, Moshi,
Tq. Haveli, Dist. Pune

... PETITIONER

VERSUS

1. The State of Maharashtra,
through M.I.D.C. Police Station,
Ahmednagar
(Copy to be served on Public
Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)

2. Gorakh s/o Maruti Valve,
Age 53 years, Occu. Service,
R/o Sarola Kasar, Tq. Nagar,
Dist. Ahmednagar.

... RESPONDENTS

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Mr. S.B. Tarde, Advocate for petitioner
Mr. S.P. Sonpawale, A.P.P. for respondent No.1.
Mr. K.P. Bharaswarkar, Advocate for respondent No.2
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CORAM : R. G. AVACHAT, J.

Date of reserving order : 24th February, 2022

Date of pronouncing order : 23rd August, 2022

ORDER :

The challenge in this Criminal Writ Petition is to
the order dated 4/10/2021, passed by learned Additional

Sessions Judge, Ahmednagar on application Exh.60 in Sessions Case No.84/2020. The petitioner herein had moved the said application for discharge. The learned Additional Sessions Judge has rejected the same. Hence the present Criminal Writ Petition.

2. A crime vide C.R. No.713/2019 was registered with M.I.D.C. Police Station, Ahmednagar for offence punishable under Sections 396, 120(B), 341, 412, 201 of the Indian Penal Code. On investigation of the crime, the charge sheet came to be filed. The learned Judicial Magistrate, First Class committed the case to the Court of Sessions. It is the case of the prosecution that, accused No.1 to 6 committed dacoity with murder. A truck carrying 1000 gunny bags containing milk powder manufactured by "Sonai Indapur Doodh Dairy and Milk Powder Ltd." was intercepted by accused No.1 to 6. The driver of the truck was murdered. The 1000 bags of milk powder were sold to the present applicant. Accused No.1 Dilip made a statement, disclosing to have sold 1000 bags of milk powder to the applicant herein. He led the investigating officer to the godown of the applicant, wherefrom 1000 bags containing milk powder of a particular description "Sonai Indapur Doodh Dairy and Milk Powder Ltd." came to be seized. The applicant, therefore, has been made

accused in the case.

3. The learned counsel for the petitioner would submit that, the petitioner has been falsely implicated. All the papers of investigation would indicate the petitioner to have not played any role in the crime in question. There is not a single witness to state anything incriminating against the petitioner. It was only pursuant to the statement made by co-accused the petitioner came to be roped in. Statement of co-accused is inadmissible in evidence. The recovery panchanama made pursuant to the disclosure statement by accused Dilip does not bear the petitioner's signature. The same indicates the petitioner was not present when it was drawn and seizure was made. There is no material to indicate the petitioner was in possession or control of the godown premises wherefrom the milk powder came to be seized. According to learned counsel, the trial Court has overlooked this aspect of the matter. The learned counsel has relied on the judgment of this Court in case of **Ramesh Lilaram Lohana Vs. The Sr. Police Inspector & Anr.** reported in 2020 ALL MR (Cri) 2305.

4. The learned A.P.P. would, on the other hand, submit that, there is material to indicate the petitioner's prima

facie involvement in the offence in question. The learned Additional Sessions Judge has rightly rejected the application. According to learned A.P.P., no interference with the order impugned herein is warranted.

5. Chapter XVIII of the Code of Criminal Procedure speaks of trial before the Court of Sessions. Section 227 thereof reads thus :

"227. Discharge :- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so."

6. In (2008) 10 SCC 394 [Yogesh Alias Sachin Jagdish Joshi Vs. State of Maharashtra], the Hon'ble Supreme Court held :-

"It is trite that the words "not sufficient ground for proceeding against the accused" appearing in Section 227 Cr.P.C. postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends

upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible.”

7. The petitioner is alleged to have received stolen goods i.e. 1000 bags of milk powder. It is the case of prosecution that, accused No.1 to 6 had intercepted a truck carrying 1000 bags of “Sonai Indapur Doodh Dairy and Milk Powder Ltd.”. They first killed the truck driver. It is also the case of the prosecution that, milk powder came to be sold to the petitioner herein. Accused No.1 Dilip made a disclosure statement on 7/1/2020. It was a statement under Section 27 of the Evidence Act. He disclosed to have sold 1000 bags of milk powder to the petitioner herein. He then led the investigating officer to the place (godown) wherefrom 1000 bags of milk powder came to be seized. The bags containing the milk powder bear the mark “Sonai Indapur Doodh Dairy and Milk Powder Ltd.”. The disclosure statement further indicates that the petitioner herein was present at the godown

wherefrom the milk powder came to be seized. In view of this Court, failure to obtain the petitioner's signature on seizure panchanama is of little consequence to infer his prima facie involvement in the offence in question. The petitioner does not claim to have had purchased the milk powder from an authorised dealer.

8. The judgment in case of Ramesh Lohana (*supra*) would be of little consequence for the petitioner since the question of discharge is to be answered based on papers of investigation obtainable in a particular case. It is reiterated that, the disclosure statement made by the co-accused, pursuant to which the milk powder came to be seized from the place of the petitioner, is sufficient to indicate the petitioner's prima facie involvement in the offence and for framing of charge for the relevant offence. This Court finds no reason to interfere with the order impugned herein. The Criminal Writ Petition thus fails. It is dismissed.

(R. G. AVACHAT)
JUDGE

fmp/-