

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

ANTICIPATORY BAIL APPLICATION NO.1445 OF 2021

Shaikh Abdul Khalique S/o Abdul Rauf

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr. Shaikh Wajeed Ahmed Advocate for Applicant.
Mr. A.M. Phule, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 15th MARCH, 2022

ORDER :

1. Applicant is apprehending his arrest in connection with Crime No.274 of 2021 registered with Police Station, Hingoli Rural, District-Hingoli for the offence punishable under Sections 3 and 7 of the Essential Commodities Act.

2. Heard learned Advocate Mr. Shaikh for the applicant and learned APP Mr. Phule for the respondent – State.

3. It has been submitted on behalf of the applicant that the First Information Report lodged by Police Inspector Ramkrishna Malghane of Hingoli Rural Police Station would disclose that they had received information from the Assistant Superintendent of Police that at a place in front of Virteja Dhaba on Hingoli – Washim road within the jurisdiction of village Chinchala, Taluka and District-Hingoli, some persons are selling industrial oil (Bio-diesel). Therefore, raid was arranged by arranging two Panchas. They could find there applicant along with a tanker bearing No.MH-04-CP-8457, containing some substance having smell like diesel. Sample was taken and the inquiry was made wherein the applicant stated that he himself is the owner of the said tanker and he is having valid license to sell Bio-diesel, issued by the Collector. On the next day, the applicant produced the documents before the informant which were sent to the Assistant Superintendent of Police to check its genuineness and when it was found that the said documents were bogus one, the First Information Report was lodged. It is submitted that in the entire First Information Report the substance has been referred to as industrial oil (Bio-diesel).

4. It has been further submitted on behalf of the applicant that the applicant deals in the business of industrial oil and for carrying out such business, he is having all the requisite permissions. Reliance has been placed on the copy of Shop Act License issued in the name of "Sky Trading Company" of which applicant is the proprietor, which shows that applicant is authorized to conduct the business of industrial oil and bitumen. Learned counsel for the applicant further submits that Government of India, Ministry of Micro, Small and Medium Enterprises has also issued license to the establishment of the applicant. It is submitted that the vehicle used in the alleged crime and fuel, as well as the documents are already seized by the police and therefore custodial interrogation of the applicant is not required as nothing is required to be recovered from the applicant.

5. Per contra, the learned APP strongly opposed the Application and submitted that the letter issued by the District Supply Officer to the Investigating Officer clearly discloses that no license regarding Bio-diesel has been issued to the establishment of the applicant. Applicant was caught red handed by the raiding team along with the tanker containing the Bio-

diesel. Even the applicant has admitted that he is the owner of the said tanker. The physical custody of the applicant is required as there is direct involvement of the applicant who was found to be selling the Bio-diesel, without having valid permission to that effect.

6. At the outset, it is to be noted that it is the case of prosecution that the sample of the said substance was taken and the same was sent for Chemical Analysis, therefore by order dated 10th January 2022 this Court directed the learned APP to produce the C.A. Report. Thereafter, again on 31st January 2022, 15th February 2022 and 4th March 2022 time was sought by the learned APP to produce the report of the Chemical Analyzer. Admittedly, the offence is registered under the provisions of Sections 3 and 7 of the Essential Commodities Act. Though sufficient opportunity was given to the prosecution to produce the C.A. Report, it has not been produced. In absence of the same, it is not known as to what is the substance that has been seized and whether the said product can be said to be covered under the provisions of the Essential Commodities Act, is a question. Even otherwise, it seems that the tanker allegedly involved in the crime as well as all the relevant documents have

already been seized by the police and therefore, custodial interrogation of the present applicant is not required for the purpose of investigation. The investigation can still go on if the attendance is directed to be given and therefore, the interim protection granted earlier deserves to be confirmed. Hence the following order is passed:-

ORDER

- i) Application stands allowed.
- ii) Interim protection granted to the applicant by this Court by order dated 3rd December 2021 stands confirmed. It is thus clarified that in the event of arrest of the applicant – Shaikh Abdul Khalique S/o Abdul Rauf in connection with Crime No.274 of 2021 registered with Police Station, Hingoli Rural, District-Hingoli for the offence punishable under Sections 3 and 7 of the Essential Commodities Act, he be released on bail on PR Bond of Rs.50,000/- (Rupees Fifty Thousand), with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each.

iii) Applicant shall attend Police Station, Hingoli Rural, District-Hingoli on every Thursday between 10.00 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.

v) Applicant shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI , J.]