

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

ANTICIPATORY BAIL APPLICATION NO.1549 OF 2021

Raju @ Rajendra S/o Ashok Sabale

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Shashikant E. Shekade Advocate for Applicant.
Mrs.Vaishali Patil-Jadhav, A.P.P. for Respondent-State.
...

WITH

ANTICIPATORY BAIL APPLICATION NO.1505 OF 2021

- 1) Rahul Machhindra Gore,
- 2) Vilas Lalasaheb Bhambare,
- 3) Ravindra Vinayak Gore

...APPLICANTS

VERSUS

The State of Maharashtra

...RESPONDENT

...
Ms.Pradnya S. Talekar Advocate i/b. Talekar and Associates
for Applicants.
Mrs.Vaishali Patil-Jadhav, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 27th JANUARY 2022

DATE OF PRONOUNCING ORDER : 25th FEBRUARY 2022

ORDER :

1. Applicants in both the Applications are apprehending their arrest in connection with Crime No.609 of 2021 registered with Ahmednagar Taluka Police Station, Taluka and District-Ahmednagar for the offence punishable under Sections 3 and 7 of the Essential Commodities Act, 1955, Sections 3, 4 and 6 of the Motor Spirit and High Speed Diesel Order, 1988, Section 23(a) of the Petroleum Act, 1934 and Sections 3, 4 and 6 of the Explosives Act.

2. Heard learned Advocates for the applicants in both the Applications and learned APP for the respondent – State.

3. It has been submitted on behalf of the applicants that the First Information Report lodged by P.S.I. Sopan Gore of Crime

Branch would disclose that they had received secret information that at a place behind Hotel Swapnil on Ahmednagar – Solapur road within the jurisdiction of village Watephal, Taluka and District-Ahmednagar some persons are selling Bio-diesel of yellowish colour. Therefore, raid was arranged by arranging two Panchas. They could find in all five persons at that place and two trucks and three tankers containing some substance, which can be said to be highly inflammable. Sample was taken and the inquiry was made wherein names of present applicants were revealed by the co-accused. In the entire First Information Report the substance has been referred to as Bio-diesel. Reliance has been placed on the decision of the Division Bench of this Court at Principal Seat in ***Writ Petition (Lodging) No.3297 of 2014***, decided on 3rd February 2015, holding that, the Division Bench is of the view that on the basis of Section 3(5) of the Petroleum Ministry's order of 2005, action cannot be taken against the petitioner therein who is dealing with manufacturing, storage, distribution, contracting and sale of bio-diesel which does not fall within the definition of petroleum or petroleum products. However, that was the interim order and the said Petition is still pending. As an interim order, the respondents

therein were restrained from taking coercive steps against the petitioner.

4. It has been further submitted that whatever has been seized, does not fall either under the definition in the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order, 1998, the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 and the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Amendment Order, 2017. It also does not fall within the definition of the Petroleum Act, 1934 nor it can be said to be befitting in the Explosives Act, 1884. Bio-diesel has not been per-se defined under these Acts. Even if for the sake of arguments it is accepted that the provisions of Petroleum Act would be applicable in view of the fact that the storage was more than 30 liters, we will have to then consider whether the substance falls under "Petroleum Class A", "Petroleum Class B" and "Petroleum Class C", defined in Section 2 (b), 2(bb) and 2(bbb) of the Petroleum Act. Further, at this stage in the First Information Report the flash-point of the substance i.e. liquid has not been stated. Not holding of the license or the contravention of any provisions of Chapter I or

any rules made thereunder has been made punishable under Section 23 of the Petroleum Act and the maximum punishment that is provided, is of three months. So, it would be the bailable offence. The said product cannot be said to be covered under the Essential Commodities Act. The learned Additional Sessions Judge at Ahmednagar, in respect of another case, has given in details as to how similarly situated accused persons who were alleged to have been found selling Bio-diesel product are not responsible or *prima facie* case is not made out against them and therefore, their applications for anticipatory bail came to be allowed. There are no such rules as pointed out by the prosecution that it would amount to an offence having committed by the present applicants who were in fact not found at the spot at the relevant time. The applicants are entitled to get anticipatory bail. They are ready to co-operate with the investigation.

5. Per contra, the learned APP strongly opposed the Applications and submitted that now the Test Reports of the sample have been given by the State Level Coordinator (Oil Industry), Maharashtra, who had referred the said sample to Bharat Petroleum Corporation Limited, Quality Assurance Laboratory, Sewree, Mumbai. The said report says that, Abel

Flash Point °C Minimum that has been found in the product is 57 when the requirement thereof was 35. The other categories have been mentioned and the remark is, "the sample fails to meet the requirements of Bio-diesel B6-B20 with respect to Appearance, Distillation, Bio-diesel Content & Total Sulphur tests carried out as per IS 16531:2016 Latest Revision". Twelve persons have been arrested in this case, some of them at the spot, and the present applicants and others are absconding. Some of them are the owners of the vehicles involved in the sale of oil. In fact when the inquiry was made, the arrested accused persons told that from the supplier they had purchased substance called hydrocarbon oil, which is highly inflammable and it is stated to have been used for industrial purposes, but it was pretended to be Hydrocarbon Oil Bio-diesel and accordingly it has been sold. It amounts to cheating of the persons who would be purchasing those products and therefore, even the offences under Section 468 and 420 of the Indian Penal Code have been added. The physical custody of the applicants is required as there is direct involvement of the present applicants in view of the fact that their vehicles were found transporting the said products and their persons or the persons under their directions were found to be selling those products.

6. At the outset, it is to be noted that the test report has been arrived and therefore, we may not deliberate much as to what was the substance and how we could have interpreted about the section that would attract. Prior to that, in fact though whatever name has been given in the First Information Report and the statements, it could have been literally the substance and its real nature could be concluded only after the test report by the competent Laboratory. The remark that has been given by the Laboratory is reproduced earlier and it specifically states that the said sample fails to meet the requirements of Bio-diesel B6-B20 with respect to appearance, distillation, Bio-diesel content and it is stated that total Sulphur tests carried out. It was expected from the Laboratory to state as to what exactly the substance is. It was sent under the name "HSD-Biodiesel Blend (B6-B20)". Now, it would be the task of the trial Court to consider, as to what is the product in view of the test, because as per the Petroleum Act the petroleum substances have been divided as Class A, Class B and Class C, which is in respect of flash point. Even if for the sake of arguments we accept that the said substance which is found is a petroleum product, yet, the offences made punishable under Section 23 of the Petroleum Act, gives maximum punishment of three months. As regards

the offences under the Essential Commodities Act are concerned, except Section 7 (1) (a) (i) and (ii) of the said Act, rest are bailable.

7. It is then stated that offence under Section 468 and 420 of the Indian Penal Code have been added. As regards Section 420 of the Indian Penal Code is concerned, the person who purchased that substance has not lodged any report, or in the present case it would be at the most attempt, because the entire substance has been seized by the Police as they had conducted the raid at the place at the same time. Section 468 of the Indian Penal Code is in respect of forgery for the purpose of cheating. It cannot be as against the present applicants as they were not present at that spot and at this stage there is nothing on record to connect them with any forged document. It may be against co-accused.

8. As regards the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Orders are concerned, it does not include Bio-diesel and at the cost of repetition it can be said that when exact name of the product is not given in the Laboratory Test Report,

whether there is violation of any order promulgated by the Government, would be a question.

9. Therefore, taking into consideration the facts involved, the applicants deserve to be released on bail by confirming the interim protection granted earlier, in both the Applications. Hence the following order is passed:-

ORDER

- i) Both the Applications stand allowed.
- ii) Interim protection granted to the applicants in both Applications by this Court by order dated 22nd December 2021 stands confirmed. It is thus clarified that in the event of arrest of the applicant – Raju @ Rajendra S/o Ashok Sabale in Anticipatory Bail Application No.1549 of 2021 and in the event of arrest of the applicants in Anticipatory Bail Application No.1505 of 2021 viz. applicant No.1 – Rahul Machhindra Gore, applicant No.2 – Vilas Lalasaheb Bhambare and applicant No.3 – Ravindra Vinayak Gore, in connection with Crime No.609 of 2021 registered with Ahmednagar Taluka Police Station, Taluka and District-Ahmednagar for the offence punishable under Sections 3

and 7 of the Essential Commodities Act, 1955, Sections 3, 4 and 6 of the Motor Spirit and High Speed Diesel Order, 1988, Section 23(a) of the Petroleum Act, 1934 and Sections 3, 4 and 6 of the Explosives Act, they be released on bail on PR Bond of Rs.50,000/- (Rupees Fifty Thousand) each, with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each.

iii) The Applicants in both the Applications shall attend Ahmednagar Taluka Police Station on every Thursday between 10.00 am. to 2.00 p.m. till filing of the charge-sheet and co-operate with the investigation.

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

[SMT. VIBHA KANKANWADI , J.]