

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.445 OF 2022**

Dadasaheb Babasaheb Gagare and Ors. ...
Applicants
versus
State of Maharashtra and Ors. ... Respondents

Mr. Raviraj Rajaram Paramane, for Applicants.
Ms. J.S.Lohakare, APP, for State.
Mr. Amol Salunkhe, API, Padagha Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 2nd MAY, 2022

P.C.

1. The Applicants, whose trucks have been confiscated by an order passed by the District Collector, Thane, in exercise of the power under Section 6A(1) of the Essential Commodities Act, 1955, have approached this Court being aggrieved by the order dated 12th April, 2022 passed by the Additional Sessions Judge, Thane on an Application for stay in Appeal No.39 of 2022 preferred by the Applicants against the order passed by the District Collector, Thane.
2. The learned Additional Sessions Judge rejected the Application for stay holding that there was nothing to be stayed at that stage of the proceedings. The learned Additional Sessions Judge found that the order passed by the Collector was in

consonance with the provisions contained in proviso to Section 6A(1) of the Essential Commodities Act, 1955.

3. By an order dated 4th March, 2022 whilst confiscating the trucks, the particulars of which are mentioned in clause (iv) of the said Order, the Collector directed that the vehicles be returned to the registered owners of the trucks subject to furnishing bank guarantee to cover 50% of the price of the vehicles to be determined by the Regional Transport Officer. If the registered owner of the vehicles failed to furnish the bank guarantee within 30 days, those vehicles be sold and the sale proceeds be credited to the treasury.

4. The learned Counsel for the Applicants submitted that the Applicants are not in a position to submit the bank guarantee and the consequence could be that the vehicles could be sold while the Appeal before the Additional Sessions Judge against the very order of confiscation, still awaits decision. The learned Counsel further submitted that the order of confiscation itself is not in consonance with the law.

5. The learned Additional Sessions Judge has recorded that the Collector has merely asked the Applicants to submit the bank guarantee before the return of the seized vehicles to the Applicants.

It seems the Additional Sessions Judge had not considered the consequences which entail the failure of the Applicants to furnish the bank guarantee within the stipulated period.

6. In the aforesaid view of the matter, the question of stay to the execution and operation of the order passed by the Collector during the pendency of the Appeal ought to have been considered by the learned Additional Sessions Judge, in a greater detail. The consequences which emanate due to failure to furnish the bank guarantee, within the stipulated period, were required to be kept in view. It seems the learned Additional Sessions Judge was of the view that the directions for furnishing the bank guarantee was innocuous and did not entail the consequences. This is not the case.

7. Hence, the impugned order stands set aside.

8. The Application for stay stands remitted to the Court of Additional Sessions Judge, Thane.

9. The learned Additional Sessions Judge, Thane shall consider the prayer of stay afresh after providing an effective opportunity of hearing to the Applicants in accordance with law.

10. Till the time the learned Additional Sessions Judge decides the Application for stay afresh, the order passed by the Collector, Thane, to sell the vehicles for not furnishing the bank guarantee,

shall not be implemented.

11. The Applicants shall appear before the learned Additional Sessions Judge, Thane on 6th May, 2022 and shall not seek any adjournment in the Application for stay.

12. The Application stands accordingly disposed.

(N.J.JAMADAR, J.)