

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.34 OF 2022

Abay Anup Rathi

Vs.

State of Maharashtra, through it's P.S.O. P.S. Khadan, Akola Tq. and Dist. Akola.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Jugalkishor Gilda, Senior Advocate along with Mr. A. J. Gilda, Advocate, for applicant.
Ms. S. Z. Haider, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 17/01/2022

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. Heard Mr. Gilda, learned Senior Advocate for the applicant and Ms. Haider, learned Additional Public Prosecutor for the non-applicant/State.

3. The applicant is arraigned for the offence punishable under Sections 188 and 285 read with 34 of the Indian Penal Code and Sections 3 and 7 of Essential Commodities Act. Mr. Gilda, learned Senior Advocate submits, that the entire action of seizing of bio-diesel has been completed from the applicant and nothing more remains to be done, considering which, his continuation in incarceration, is unjustified. He further on instructions, makes a statement, that the mobile phone belonging to the applicant shall be surrendered today itself to the investigating authorities and further assures that no tampering of the data in the mobile has been done. He

further submits, that the supplier of the bio-diesel, namely, Kiran Arjunrao More has already been released on bail by learned Sessions Court by an order dated 04.01.2022. He further submits, that the seizure itself is illegal and contrary to the rules, under the Essential Commodities Act, as though what is required to be seized is a sample minimum of one litre of the material, but what has been seized is only 750 ml. He further submits, that the seizure has to be done by Deputy Superintendent of Police, under Rule 7 of the Motor Spirit And High Speed Diesel (Regulation of Supply, Distribution And Prevention of Malpractices) Order, 2005, has been made by PSI, which is also a contravention of Section 100 of Cr. P.C.

4. Learned Additional Public Prosecutor for the non-applicant/State opposes the application on the ground, that the investigation is still in progress and the willing participation of the applicant, in the investigation, needs to be ensured. It is further submitted, that upon release, the applicant may again indulge in a similar offence. She further submits that the seizure has been properly done by the authorized person.

5. The question about the quantity seized and the authorization of the person seizing the same, would be a matter of trial. What is material to note, is that the bio- diesel, has already been seized by the authorities and the investigation into the matter, will take time. The person, who has supplied the bio-diesel, has already been enlarged on bail, as noted above, considering which, I do

not see any reason to continue the further incarceration of the applicant in Jail. Whatever apprehension, the learned Additional Public Prosecutor for the non-applicant/State has, can be taken care of by putting conditions, hence, the following order.

ORDER

- 1] The criminal application is allowed.
- 2] The applicant be released on bail in Crime No.1203 of 2021, registered with Police Station, Khadan, District Akola, for the offence punishable under Sections 188 and 285 read with Section 34 of the Indian Penal Code and Sections 3 and 7 of the Essential Commodities Act, on his executing a personal Bond in the sum of Rs.2,00,000/- (Rs.Two Lakhs only) and two solvent sureties of a like amount.
- 3] The applicant shall attend Khadan Police Station, Akola till filing of the charge-sheet, on every Monday and Friday from 10.00 a.m. to 2.00 p.m. and shall co-operate with the investigation.
- 4] The mobile phone of the applicant shall be immediately surrendered to the Investigating Officer today itself, on the assurance, that the same has not been tampered with or data has not been deleted therefrom.
- 5] The applicant shall not be involved in any other similar offence of a like nature and in case, if he is so found to be involved, the bail shall immediately stand cancelled.
- 6] The applicant shall not indulge in any act of influencing the prosecution witnesses or tampering with the evidence.
- 7] The applicant shall not leave the Akola City without first obtaining consent in writing of the Khadan Police Station.