

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

CRIMINAL APPLICATION (ABA) NO.845 OF 2021

(Abdul Wasim Abdul Kadir Vs.State of Maharashtra, through Police Inspector, Old
City Police Station, Akola)

WITH

CRIMINAL APPLICATION (ABA) NO.882 OF 2021

(Subhash S/o Mohanlal Bhattad Vs State of Maharashtra, through Police Inspector,
Ramdaspath, Police Station, Akola)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.S. Renu, Advocate for the applicant (in both applications).

Shri V.A. Thakare, A.P.P. for the non-applicant/State (in both applications).

CORAM : ANIL S. KILOR, J.

DATED : 12/04/2022

1. The applicants in both these matters are seeking pre-arrest bail in Crime No.910 of 2021 and Crime No.969 of 2021, respectively, registered with non-applicant-Police Station for the offences punishable under Sections 3 and 7 of the Essential Commodities Act, 1955 (hereinafter referred to "Act of 1955") and under Section 285 read with Section 34 of the Indian Penal Code. The said crime was registered against the applicants after seizure of huge quantity of Bio-diesel from the applicants who were not holding any licence or permission to store or sell the Bio-diesel.

2. Shri Renu, learned counsel for the applicants submits that the Division Bench of this Court in the case of

My Own Eco Energy Pvt. Ltd. Vs. Union of India & Ors. in Writ Petition (Lodging) No.3297 of 2014 decided on 03.02.2015, has observed that *prima facie* under Section 3(5) of the Petroleum Ministry's Order of 2005, action cannot be taken against the applicants in the said case on the ground that manufacturing, storage, distribution, contracting and sale of Bio-diesel, do not fall within the definition of 'petroleum' or 'petroleum product'. He has further placed reliance on the order of Co-ordinate Bench of this Court in the case of *Raju @ Rajendra S/o Ashok Sabale Vs. State of Maharashtra* in Anticipatory Bail Application No.1505 of 2021, granting anticipatory bail in a similar offence.

3. Shri Renu, learned counsel for the applicants submits that even the allegations made in the FIR are taken on its face value, the essential ingredients of the offence punishable under Sections 3 and 7 of the Essential Commodities Act are not present.

4. On the other hand, Shri Thakare, learned APP strongly opposes the present applications. He submits that a huge quantity of Bio-diesel has been seized from the applicants and as per the Government Order dated 11.05.2021, issued by the Food, Civil Supplies and Consumer Protection Department of State of Maharashtra, as many as eleven various certificates or no objections are

required for storing, distributing and selling of Bio-diesel. It is submitted that the applicants have not produced a single certificate or No Objection which is required as per the Government Order dated 11.05.2021. He submits that the custodial interrogation is necessary in this case to find out from whom the applicants have procured such a huge quantity of adulterated diesel and unless the applicants are taken into custody, the racket, if any, working would not come to the fore. It is submitted that there are also guidelines of the Central Government in this regard which were considered and discussed in the case of *Vishnu Kumar Vs. State of Uttar Pradesh and oth.* decided by Allahabad High Court.

5. He further submits that the Full Bench of this Court in the case of *Digambar S/o Rodji Wankhede Vs. State of Maharashtra and another*, dated 01.08.2019, passed in Criminal Application No.731 of 2015, has held that mere non-mention of a particular provision of an “Order” or “Order” issued under Section 3 of the Act of 1955, by itself is not sufficient to quash and set aside an FIR. It is further held that the State would be entitled to demonstrate before a Court that an order issued under Section 3 of the Act, 1955, indeed exists and that there is contravention of clauses thereof, leading to offence under Section 7 of the Act of 1955.

6. I have perused the Case Diary and also the contents of the First Information Report.

7. The FIRs, in both the applications disclose that a huge quantity of adulterated Bio-Diesel was seized from the applicants. *Prima facie*, the applicants do not possess any of the required certificates or No Objection Certificates stipulated in Government Order dated 11.05.2021, issued by Food, Civil Supplies and Consumer Protection Department of the Maharashtra State. It is to be noted that till date there is no judicial pronouncement holding that Bio-diesel does not fall within the ambit of Essential Commodities Act. Even considering the Government Order dated 11.05.2021, it is not permissible for anyone without permission to manufacture, store, distribute or sell Bio-diesel without following the procedure stipulated in the Government Order dated 11.05.2021. The applicants have not come up with any such permission issued in their favour for storage or sell of Bio-diesel.

8. Thus, *prima facie*, incriminating material is available on record against the applicants. In that view of the matter, I am not inclined to allow these applications. Accordingly, I pass the following order:

Both these applications are **rejected**.