

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 1540 OF 2022

Mr Balaprasad Sanjay Barkamkar .VS. The State of Maharashtra and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr A. R. Fule, Advocate for the applicant
Mr H. D. Dubey, APP for respondent No. 1/State

CORAM : G.A. SANAP, J.
DATE : NOVEMBER 21, 2022.

Heard learned Advocate for the applicant, at the stage of issuance of notice. The learned Advocate has taken me through the order passed by the learned Judicial Magistrate First Class dated 16.11.2022 and modified order dated 17.11.2022. The applicant is the informant in the Crime bearing Nos. 34 and 35 of 2022, registered at Etapalli Police Station, District Gadchiroli. It is seen on perusal of the order dt. 17.11.2022 that the informant/applicant made an application dated 05.09.2022 seeking a permission for disposal of the paddy (Rice), as stated in the application, on the ground that the paddy (Rice) is perishable. Learned Magistrate after going through the record was pleased to grant the application subject to certain conditions.

2 It is seen that the applicant/informant is aggrieved by the conditions imposed by the Magistrate with regard to the drawing of the separate panchanama of the sacks containing paddy (Rice) stored at the ware-house/s of the Societies at Etapalli. The learned Magistrate further directed that the panchanama shall contain the precise number of sacks, their gross weight by loading on the trucks (truck-wise details) and total price of the paddy (Rice) so available as on today. He further directed that panchanama shall be prepared in presence of the investigating officer investigating the crime or in the presence of his specially authorized representative police officer and also in presence of two independent and reliable panch witnesses. The learned Magistrate further directed that the entire process shall be video recorded at the expenses of informant/applicant herein. The direction has been given to the investigating officer to arrange for the video recorder. The Court has further directed that the video recording shall be further submitted to the Court without making any copy thereof.

3 It is to be noted that there is no reason for the applicant/informant to be aggrieved by this order. Perusal of the conditions imposed by the Magistrate would indicate that all these precautions have been taken to take care of the situation prevailing. In my opinion, such conditions are in the interest of the applicant/informant.

4 It is seen that the report with regard to misappropriation of the paddy (Rice) by the Society was lodged on 12.07.2022 by this applicant. He made this application on 05.09.2022. It is submitted by the learned Advocate that during this period from the date of the report till 05.09.2022 the sacks of the paddy (Rice), involved in the commission of the crime, have not been seized by the investigating officer. In my view, this is a separate issue and investigating officer would be responsible for the same. However, when the applicant has come before the Court to dispose of the paddy (Rice) on the ground that there is likelihood of same getting perished, he must stand by his statement. He cannot be allowed to blow hot and cold from the same pipe. In my view, in the facts and circumstances the conditions imposed by the learned Magistrate are just, proper and reasonable. Therefore, in my view, no interference is warranted in the said order.

5 The learned Advocate further submitted that in para No. 13 of the impugned order dated 16.11.2022, the learned Magistrate has made certain observations/strictures against the applicant. The learned Advocate submits that these observations/strictures are not supported by the record. He was not given an opportunity to explain this before making any observations or passing strictures. In my view, considering the facts and circumstances, the liberty can be

granted to the applicant to appear before the Magistrate and make a prayer to expunge these observations. It is made clear that as and when such an application is made, the learned Magistrate shall consider the same on its merit and on the basis of the material produced before the Court by the applicant. In view of this, the application stands summarily **dismissed**.

6 At this stage learned Advocate points out that as per the schedule fixed by the learned Magistrate the exercise was to be undertaken on 18, 19, 21, 22, 23, 24 and 25 of November 2022. The learned Advocate submits that the learned Magistrate may be directed to reschedule the programme fixed. In view of this order, in my view, only the original programme fixed on 18, 19, 21 and 22 of November 2022 can be rescheduled. The learned Magistrate in the given facts situation shall reschedule the programme which was fixed on 18, 19, 21 and 22 of November 2022 pursuant to his order.

(G. A. SANAP, J.)

Namrata