

C.R.M. (DB) 836 of 2023

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

C.R.M. (DB) 836 of 2023

The State of West Bengal

Vs.

Shyamal Maity

For the Petitioner-State

:Mr. Rudradipta Nandy, Ld. APP
Mr. Ranadeb Sengupta, Ld. Advocate

For the opposite party

: Mr. Sabyasachi Chatterjee, Ld. Advocate
Mr. Sandipan Das, Ld. Advocate
Mr. Badrul Karim, Ld. Advocate
Mr. Dipankar Das, Ld. Advocate

Hearing concluded on : May 10, 2023

Judgment on : May 10, 2023

DEBANGSU BASAK, J.:-

1. Order no.4 dated November 25, 2022 passed by the learned Sessions Judge, In-Charge, Alipore granting anticipatory bail to the opposite party is under challenge in the present application.

2. Learned Advocate appearing for the State submits that, the impugned order suffers from perversity. He refers to the impugned order. He submits that, the principal ground for grant of the anticipatory bail is that, there was an alleged violation of the provisions of the search and seizure guided under the West Bengal Public Distribution (Maintenance and Control) Order, 2013. According to the learned Judge, the similar situation, the Bombay High Court in 2002 Cri. L.J. 1040 (Laxmikant Sarda vs. State of Maharashtra & Anr.) granted anticipatory bail to an accused.

3. Learned Advocate appearing for the State submits that, the opposite party claimed himself to be the owner of the rice seized. The opposite party applied before the jurisdictional Magistrate for the release of the seized rice on the strength of invoice. Learned jurisdictional Court wanted a report from the police which was submitted stating that the invoice was antedated.

4. Learned Advocate appearing for the State draws the attention of the Court to the materials in the case diary and

submits that, the provisions of the Control Order of 2013 were adhered to while seizing 16,000 kgs of rice from the vehicle belonging to the petitioner. He submits that, the rice was sent for examination and that, the analytical report states that, the rice belonged to the Public Distribution System.

5. Learned Advocate appearing for the State submits that, the petitioner was found in possession of 16,000 kgs of rice meant for the Public Distribution System. The petitioner did not possess any licence under the Public Distribution System to be in legitimate possession of such rice. Consequently, the learned Judge overlooked such essential facts in granting the impugned order.

6. Referring to the judgment of the Bombay High Court which was relied upon by the learned Judge in granting the order of anticipatory bail, the learned Advocate appearing for the State submits that, the ratio therein is not applicable to the facts and circumstances of the present case. The provisions of the Kerosene Control Order which were noted

in such judgment are not *pari materia* with the Control Order of 2013 of the State of West Bengal.

7. Learned Advocate appearing for the opposite party submits that, the police did not issue any notice under Section 41A of the Code of Criminal Procedure. He submits that, the provisions of the Control Order of 2013 were not adhered to while conducting the search and seizure. Therefore, according to him, no interference is called for with the impugned order.

8. In a search and seizure effected 16,000 kgs of rice were seized by the police. Seizure was made from the vehicle owned by the opposite party. Private opposite party applied before the jurisdictional Court claiming ownership of the seized 16,000 kgs of rice on the basis of documents he produced before the jurisdictional Court.

9. Therefore, at this stage, it cannot be doubted that the opposite party was found in possession of the 16,000 kgs of rice seized and that, he claims ownership in respect thereof.

10. Samples of rice seized were sent for analysis and the reports states that, the rice belong to the Public Distribution System. It is not the case of the private opposite party that he possesses any licence under the Public Distribution System to be in legitimate possession of 16,000 kgs of rice belonging to the Public Distribution System.

11. The Bombay High Court in **Laxmikant Sarda (supra)** considered the provisions of the Essential Commodities Act and the Kerosene Control Order.

12. The search and seizure herein is governed by the Control Order of 2013. Relevant portion of the control order of 2013 is as follows:

“23. Power to enter and inspect premises and to require information, accounts, etc.

with a view to securing the equitable distribution of food grains and other public distribution commodities and for the purpose of securing compliance with the provisions of this Order or any regulation made there under or any

direction issued under such order, any official not below the rank of a Sub-Inspector of the Food and Supplies having jurisdiction in the area or a vigilance squad having been duly constituted or any police officer not below the rank of Sub-Inspector of police with prior intimation to the licensing authority and accompanied by an officer not below the rank of Sub-Inspector of F&S Department may-

(a) enter any premises used or believed to be used for the sale, distribution or storage for sale or distribution of public distribution commodities and inspect any such premises and public distribution commodities therein or thereon;

(b) require any person to make any statement or furnish any information or to produce any document or article in his/her possession or under his/her control relating to the purchase, sale, distribution or storage of any public

distribution commodity and every person so required shall comply with the requirement;

(c) require any person to render any account or to produce books of accounts or documents believed to be in his/her possession relating to purchase and sale of public distribution commodities;

(d) take or cause to be taken extracts from the copies of any documents relating to the purchase, sale, distribution or storage of public distribution commodities which is produced under sub-clause(b) or sub-clause(c) above or otherwise found in any such premises;

(e) test or cause to be tested the correctness of any weight or measure used or believed to be used in any transaction relating to the sale or distribution of public distribution commodities;

(f) take or cause to be taken the weight of all or any of the public distribution commodities

found in any such premises, prepare weightment chart and chart of physical verification of stock;

(g) inspect and seize any stock of public distribution commodities (including atta/wheat flour) or any document relating to the purchase, sale, distribution or storage of public distribution commodities in respect of which the concerned official has reason to suspect that a contravention of these orders or of any directions issued under such order has been, is being, or is about to be committed.”

13. There is nothing on record to suggest that there is a violation of the provisions of the Control Order of 2013 in the search and seizure effected. More importantly 16,000 kgs of rice belonging to the Public Distribution System was found in possession of the opposite party when he is not supposed to be in possession thereof. There is no explanation as to how he came into possession of such quantity of rice belonging to the Public Distribution System.

14. The period of punishment prescribed for the violations of the provisions of the Essential Commodities Act and some of the provisions of the Indian Penal Code under which the opposite party is being investigated into exceed a period of seven years. Moreover, anticipatory bail was not granted on the basis of the non-compliance of Section 41A of the Code of Criminal Procedure.

15. In such circumstances, we are of the view that the learned Judge failed to take into account the relevant materials for the purpose of consideration of a grant of anticipatory bail, misdirected his enquiry and arrived at a wrong finding. He applied the ratio of Laxmikant Sarda (supra).

16. In view of the discussions above, the anticipatory bail granted to the private opposite party on November 25, 2022 is cancelled.

17. All consequential steps taken pursuant thereto are also cancelled.

18. Opposite party will surrender before the jurisdictional Court within May 19, 2023. In default, jurisdictional Court is at liberty to take appropriate steps.

19. **C.R.M. (DB) 836 of 2023** is disposed of.

(Debangsu Basak,J.)

20. I Agree.

(Md. Shabbar Rashidi, J.)