

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**Criminal Writ Petition No.4609 of 2018**

Mr Syamsul Bakhri

Age :48 years, Occ:Captain of Ship,

R/at: Komp Puri,

Taman Sari, Block F-1,

No 16, Makassar, Indonesia

... Petitioner/Accused  
No.7.

Versus

The State of Maharashtra

(At the instance of Sr.Inspector,

Yellow Gate Police Station, Mumbai)... Respondent.

Ms Keral Mehta, Advocate i/by Niranjan S. Mundargi for  
petitioner.

Mr AA Palkar, APP for the Respondent-State.

**CORAM: R. N. LADDHA, J.**

**Reserved on : 26 September 2023.**

**Pronounced on : 5 October 2023.**

**Judgment :**

The accused/petitioner has filed this petition to challenge the orders of both the Courts below that denied his request to be discharged from the Criminal Case No.145/PW/2016, pending on the file of learned Additional

Chief Metropolitan Magistrate, 38<sup>th</sup> Court, Ballard Pier, Mumbai, arising out of C.R.No.36 of 2015 registered at Yellow Gate Police Station, Mumbai. The accused/petitioner is charged with the offences punishable under Sections 285, 407, 420, 120-B r/w 34 of the Indian Penal Code; Section 3, 7(2) of the Essential Commodities Act, 1955, r/w Clause 3 of the Motor Speed and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order 2005; Clause 3 of Prevention of Black Marketing and Maintenance and Supply of Essential Commodities Act, 1980 r/w Clauses 3, 4, 5, 6, 7 of the Petroleum Product & Maintenance of Production, Storage and Supply Order, 1999.

2. The prosecution alleges that the first informant, who was part of the Fugitive Squad headed by the Deputy Police Commissioner of Port Zone, got a tip-off that some people were selling diesel illegally at 'Bhaucha Dhakka', a seafront pier. The first informant, along with other police officers and witnesses, went to search in the Arabian Sea. They spotted a tugboat without any registration number and some fishing boats near New Fish Jetty and Mazgaon Dock. They saw two diesel tanks and two pumps on the tugboat and accused No.1 to 6 were using them to sell diesel unlawfully to the nearby

fishing boats. The first informant learnt that these accused persons were acting on behalf of accused No.8 and that they had obtained/bought the diesel from the petitioner/accused No.7, who was Captain of a foreign ship namely Crest Jade-1. The police seized the tugboat and a fishing boat named 'Dronagiri Mauli'. They registered an FIR vide CR No.36 of 2015 on 2.12.2015 for the offences indicated above. During the course of investigation, statements of the witnesses were recorded. After completion of investigation, charge sheet came to be filed.

3. Ms Keral Mehta, the learned Counsel appearing on behalf of the accused/petitioner submitted that the only evidence implicating the petitioner in the commission of alleged offence is the statement of accused No.1, however, the statement of the co-accused is not admissible in law. She pointed out the statement of one Arif Suleman Guharkar and submitted that this witness has stated only to the extent that he had dropped and picked up the accused No.8 from the Crest Jade-1 ship which is insufficient to establish that the accused No.8 had a meeting with the accused/petitioner. She submitted that even though the allegations made in the charge sheet are taken as it is, still the conviction under the alleged

offence is a far fetched result. In such circumstances, the continuation of the subject trial will only lead to wastage of valuable time of the learned trial Court.

4. Mr AA Palkar, learned Additional Public Prosecutor for the State submitted that admittedly the applicant is a Captain of the ship Crest Jade-1. He was apprehended pursuant to the raid. The statement of the witnesses shows that they had purchased diesel from the boat Crest Jade-1. According to the learned APP, the specific allegations against the applicant is seen from the statement of the co-accused. However, the learned APP conceded that the accused/petitioner was implicated only on the basis of statement of the co-accused Yasin.

5. Upon perusal of the charge sheet, it is seen that the only evidence implicating the accused/petitioner in the commission of the alleged offence is the statement of original accused No.1 who stated that the diesel was acquired/bought from the present petitioner. But this accused did not say that the petitioner was the captain of the ship where the diesel was found. The other witness, Arif Suleman Guharkar, only said that he took and brought back the accused No.8 from the ship

Crest Jade-1. This is not enough to show that the accused No.8 met with the petitioner. Moreover, Arif Suleman said that accused No.8 told him that he met with the captain of the Crest Jade-1, which is admittedly a hearsay evidence. Even if, the allegations made in the charge sheet are taken as it is, still no offence is made out against the accused.

6. In view of this, the petition is allowed in terms of prayer clause (C), which reads thus :

“C. This Hon’ble Court be pleased to quash and set aside impugned order dated 26/04/2017 passed by Ld. Addl. C.M.M., 38<sup>th</sup> Court, Ballard Pier, Mumbai, in Criminal Case No.145/PW/2016 below “Exhibit No.04” and impugned order dated 24/11/2017 passed by the learned Additional Sessions Judge, Gr. Mumbai, in Criminal Revision Application No.621 of 2017; and further be pleased to discharge the petitioner from proceedings being Criminal Case No.145/PW/2016 pending on the file of Ld. Addl. C.M.M., 38<sup>th</sup> Court, Ballard Pier, Mumbai, in the interest of justice.”

[R.N.Laddha, J.]