

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

**CRIMINAL APPLICATION (ABA) NO.706/2023
Sandesh Suresh Tammiwar**

..VS..

**The State of Mah., thr.PSO PS Bramhapuri, Taluka Bramhapuri, District
Chandrapur**

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

Court's or Judge's Order

Shri S.P.Bhandarkar, Counsel for the Applicant.
Shri V.A.Thakare, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 12/12/2023
PRONOUNCED ON : 18/12/2023

1. By this application, the applicant is seeking pre-arrest bail in connection with Crime No.478/2023 registered with the non-applicant/police station for offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

2. The applicant, who is a businessman by profession, runs a "Rice Mill" under the name and style as "Laxmi Rice Mill" situated at Talodhi Mokasa, tahsil Chamorshi, district Gadchiroli. He entered into a contract with the "Tribal Development Corporation" which supplies "Paddy" to the "Rice Mill" of the applicant and the applicant has to process it at his Mill and return the rice to the District Supply Officer.

3. The crime is registered against the applicant on the basis of report lodged by police officer on allegations that on 21.9.2023 when he was patrolling, he received a secret information that two trucks are proceeding from Wadsa to Bramhapuri and transporting the "Rice" owned by the

Government. Accordingly, he along with police officials intercepted these trucks carrying 900 bags of "Paddy" having weight of 3.60 tons. As per transport pass, both these trucks are loaded from Belgaon and the same bags have to be delivered at Talodhi at "Laxmi Rice Mill" and permitted route was Belgaon-Kurkheda-Armori-Gadchiroli-Talodi. However, the said trucks have changed its routs and were intercepted at Bramhapuri. When the trucks were intercepted, Notice was given to drivers of trucks hired by the applicant and they were directed to deliver the said "Paddy" at "Durga Rice Mill" at Bramhapuri. It is alleged that the food grains are intentionally transported to sell it in the open market to dupe the Government to the tune of Rs.9.00 lacs and the applicant committed an offence.

4. Learned counsel Shri S.P.Bhandarkar for the applicant, submitted that as per the agreement, if the Corporation provides 100 Kilograms of "Paddy", the applicant is required to return 67 Kilograms of "Rice". The "Paddy" was purchased by the Corporation from farmers and as per order issued by the officer, the Corporation is required to collect "Paddy" from different centres/godowns. Thereafter, "Paddy" is loaded and transport pass is to be issued by concerned officer. There cannot be any fixed route prescribed by the Corporation or any other officer. Learned counsel further submitted that merely because the route is changed, it is not sufficient to attract the provisions against the applicant. The "Paddy" is already seized. The custodial interrogation of the applicant is not required. As such, the applicant be protected by granting anticipatory bail.

5. Learned Additional Public Prosecutor Shri

V.A.Thakare for the State, strongly opposed the application on the ground that from statements of responsible officers, it reveals that the "Paddy" was loaded as per instructions of the applicant from Belgaon centre which is the property of the Government. It revealed that total quantity of 9393.09 quintals of "Rice" is not returned by the applicant against the "Paddy" collected from various godowns as per the agreement and loss is caused to the State Exchequer. The custodial interrogation is required to ascertain in what manner the "Rice" is disposed and the possibility of involvement of other persons cannot be ruled out and, therefore, custodial interrogation of the applicant is required and the application of the applicant is liable to be rejected.

6. After hearing learned counsel Shri S.P.Bhandarkar for the applicant and learned Additional Public Prosecutor Shri V.A.Thakare for the State, there is no dispute that the applicant is running the "Rice Mill" and he entered into the contract with the "Tribal Development Corporation". Undisputedly, in view of the terms and conditions of the agreement, the raw paddy is to be lifted by the applicant from various Government godowns and for processing the said "Paddy" he has to return the "Rice" to the District Supply Officer. Admittedly, during patrolling, two trucks were intercepted and the "Paddy" was recovered from the applicant. As per the terms and conditions of the agreement, after lifting the raw paddy, the miller has to return processed "Rice" within 10 days to the District Supply Officer. The Government Resolution dated 21.11.2022 shows that as per its relevant condition No.7.8, responsibility of transporting of "Paddy" from the Government godowns to the Mill and from the Mill to godowns is of the applicant. During investigation, the

investigating officer collected transport pass issued to the applicant. As per the said transport pass, route determined was Belgaon-Kurkheda-Armori-Gadchiroli-Talodi. During investigation, the investigating officer recorded statement of officer of the "Tribal Development Corporation" who also stated that though the applicant has lifted "Paddy" on 24.7.2023, he has not returned the "Rice" during the prescribed period in view of the agreement. A communication was issued to the applicant and till today, he has not replied the same. He specifically stated that the "Paddy" of 75620.6 quintals was supplied to the applicant and as per the agreement, he has to return 447110.80 to the District Supply Officer. He has only deposited 313110.80 which he has not supplied and it revealed that though the "Paddy" was lifted to process it in his Mill, he has changed the route and was moving the said "Paddy" to hand it over to "Devi Rice Mill" which sufficiently shows that it was for selling in the open market by taking cognizance of it. The licence of the applicant is already cancelled. It is apparent that though Notice was issued to the applicant under Section 91 of the Code of Criminal Procedure, he has not replied the said notice. After registration of the crime also, Notice under Section 41A of the Code of Criminal Procedure was issued to him, but he neither submitted relevant papers nor cooperated with the investigating agencies. Though Notice under Section 41A is duly served on the applicant, neither he approached the investigating officer nor nor extended his cooperation.

7. In view of the above, it is apparent that a *prima facie* case is made out against the applicant to show that he is involved in transporting of the "Paddy" lifted from the Government godown for processing to sell in the open market.

The investigating officer duly made compliance under Section 41A of the Code of Criminal Procedure in view of the judgment of the Honourable Apex Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and anr**, reported in **(2022)10 SCC 51**. The investigating officer has satisfactorily raised grounds regarding necessity of arrest of the applicant.

8. In the light of the above, the application of the applicant deserves to be rejected and the same is **rejected**.

The application stands disposed of accordingly.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!