

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 3683 OF 2023**

Yogita Apoorva Hiray ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr. Niteen Pradhan i/b. Mr. S. D. Khot for the Applicant.

Mr. Devendra Avhad a/w. Mr. Jitendra Jagtap, Mr. Ishan Jangam and
Ms. P. N. Dabholkar, APP for the State.

Pro.PSI Shahbaj Sultan Patel, Chawani Police Station, Malegaon,
District Nashik.

CORAM : GAURI GODSE, J.

DATE : 3rd APRIL 2024

P.C.

1. Heard the learned senior counsel for the applicant and the learned APP.

2. This application is filed for seeking pre-arrest bail in connection with C.R. No. 343 of 2023 dated 18th December 2023 registered with Malegaon Chavani Police Station for the offences punishable under Section 7 read with Section 3 of the Essential Commodities Act 1955.

The applicant had applied for pre-arrest bail before the Additional Sessions Judge, Malegaon. The said application is rejected by order dated 18th December 2023. Hence, this application is filed. By Order dated 29th December 2023, interim protection granted by the Additional Sessions Court was extended.

3. The complaint is registered against the applicant and the other 13 accused. The applicant is arraigned as accused no. 2 in the FIR. The allegation in the complaint is regarding the illegal shifting of stock from the godown of Central Kitchen maintained by the Sou Smitatai Hiray Mahila Gruh Udyog Audyogik Sahkari Sanstha ("Sanstha").

4. A perusal of the papers reveals that there is a contract in favour of the said Sanstha for supplying mid-day meals to 11 schools under the agreement dated 13th August 2019 entered between Malegaon Municipal Corporation and the said Sanstha. The applicant is the Chairperson of the said Sanstha. The central kitchen and godown of the said Sanstha were at Mahavir Nagar, Malegaon Camp within the Municipal Corporation limits. During the COVID times, the Central Kitchen and godown was shifted to Dabhadi which is beyond the Municipal Corporation limits.

5. The learned senior counsel for the applicant submitted that there was an agreement executed on 20th November 2023 for taking the premises on a rental basis for maintaining the Central Kitchen and godown within the Municipal Corporation limits. Hence, the applicant on 5th December 2023 submitted an intimation with the Commissioner of Malegaon Municipal Corporation regarding the shifting of the Central Kitchen and godown from Dabhadi to Satana Naka i.e. the place within the Municipal Corporation limits. Thus, according to the said intimation the Central Kitchen was being shifted. The said intimation was received by Malegaon Municipal Corporation on 6th December 2023. For the said shifting an invoice was also raised [Bilty receipt] which supports the contention of the applicant that stock was being transported from the godown of Dabhadi to Satana Naka i.e. within the Municipal Corporation limits. It is thus submitted on behalf of the applicant that there was no unauthorised shifting of the stock and/or any attempt for any black marketing as alleged in the FIR.

6. Learned APP submits that the allegation in the FIR is not only regarding the shifting of stocks from the Central Kitchen of the said Sanstha situated outside the Municipal Corporation limits but also an

allegation that there was no documentation and register shown at the time of inspection when the said shifting was objected because of the complaint received by the first informant. Since no supporting documents were produced at the relevant time, the FIR was registered against the applicant as well as other office bearers of the said Sanstha. The learned APP, however, submits that according to the directions issued by this Court, the applicant had attended the police station. She further submits that the applicant's statement is recorded and as instructed by the Investigating Officer, the applicant has submitted the relevant documents.

7. Learned APP produced the file to show that the statement of the applicant was recorded during the investigation. On instructions of the investigating officer, she submits that the applicant has cooperated with the investigation and has also submitted documents. She submits that subject to conditions that the applicant shall cooperate with the investigation and attend the concerned police station as and when called for and submit documents as and when called for, ad-interim protection granted by this court may be continued.

8. I have perused the papers. The allegations in the FIR are

regarding the shifting of the stock from Central Kitchen and the godown of the said Sanstha. It appears that under the contract in favour of the said Sanstha, the stocks are required to be maintained by the said Sanstha for supplying mid-day meals to 11 schools. It is the case of the applicant that on giving the undertaking to the Municipal Corporation, the Central Kitchen/Godown was shifted outside the Municipal Corporation limits during the COVID time. However, on 20th November 2023 rental agreement was executed for acquiring the premises for the Central Kitchen and godown within the Municipal Corporation limits. Accordingly, the Municipal Corporation was intimated. The document relied upon by the applicant as stated above prima facie shows that the stocks were transferred from Dabhadi to Satana Naka which is within Municipal Corporation limits.

9. Considering the contents of the FIR, it further indicates that the allegation is regarding not maintaining a register and not producing the relevant documents when called upon at the time of inspection. Hence, the applicant being the chairperson of the said Sanstha has been arraigned as the accused. The offence registered is punishable under Section 7 read with Section 3 of the Essential Commodities Act.

10. By order dated 18th December 2023 the learned Sessions Judge Malegaon has rejected the application for anticipatory bail by recording that the possibility of unauthorisedly transporting foodgrains cannot be ruled out and that only proper investigation by way of custodial interrogation would be necessary. Considering the allegations, the reasons recorded by the Additional Sessions Judge for not granting anticipatory bail do not appear to be correct.

11. Perusal of the allegations, prima facie shows that the investigation would pertain to the documentary evidence. In view of the aforesaid at this stage, custodial interrogation does not seem to be warranted. Hence, the order of interim pre-arrest bail can be made absolute on the conditions as requested by the learned APP.

12. Hence, the application is allowed by passing the following order :

- (i) Order dated 18th December 2023 passed by Additional Sessions Judge, Malegaon below Criminal Bail Application No. 1112 of 2023 is quashed and set aside.
- (ii) In the event of arrest of the applicant she be released on bail on furnishing P.R. bond in the sum of Rs.25,000/-, with one

or two sureties in the like amount;

(iii) The applicant shall attend the Malegaon Chavani police station and report to the concerned investigating officer as and when called for. The applicant shall cooperate with the investigation.

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact any witnesses concerned with the case and shall not commit similar offence;

(v) It is clarified that the prima facie observations recorded in this order are confined only to determine entitlement to pre-arrest bail.

(vi) Application is allowed in the aforesaid terms.

[GAURI GODSE, J.]

RAJESHWARI
RAMESH PILLAI

Digitally signed by
RAJESHWARI RAMESH PILLAI
Date: 2024.04.04 20:09:35
+0530