

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2391 OF 2024**

Gorakh Zabu Pawar ... Applicant

vs.

The State of Maharashtra ... Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 2741 OF 2024**

Ankush Zabu Pawar ... Applicant

vs.

The State of Maharashtra ... Respondent

Ms. Anima Mishra for applicants in both applications.

Mr. Bapu V. Holambe-Patil for respondent-State in ABA/2391/2024.

Ms. Megha S. Bajoria, APP for respondent-State in ABA/2741/2024.

Mr. Satyajeet Amale, PI., Nashik Taluka Police Station, District Nashik Rural.

CORAM : MANISH PITALE, J.

DATE : 11th OCTOBER, 2024

P.C. :

1. Heard learned counsel for the applicants and the learned APPs for the respondent-State.

2. Insofar as Anticipatory Bail Application No.2391 of 2024 is concerned, on 10.09.2024, this Court had granted interim order in favour of the applicant Gorakh Zabu Pawar, subject to specific conditions, including a direction to appear before the investigating officer on 12.09.2024 and 13.09.2024 and thereafter, as and when called by the investigating officer. The applicant was also directed to co-operate with the investigation.

3. Anticipatory Bail Application No.2741 of 2024 is filed by the co-accused i.e. Ankush Zabu Pawar, who is also the brother of the applicant

(Gorakh Zabu Pawar) in Anticipatory Bail Application No.2391 of 2024. The said application is coming up for consideration for the first time.

4. The learned counsel appearing for the applicants submits that in terms of interim order dated 10.09.2024, the applicant Gorakh Zabu Pawar abided by the directions issued by this court and appeared before the investigating officer. His statement was recorded on 12.09.2024 and supplementary statement was recorded on 13.09.2024. It was submitted that the said applicant has duly co-operated with the investigation.

5. The learned counsel appearing for both the applicants i.e. Gorakh Zabu Pawar and Ankush Zabu Pawar, submitted that in the facts and circumstances of the present case, even if the statement of the informant, leading to registration of FIR, is taken into consideration, the ingredients of the offence of cheating under Section 318(4) of the Bharatiya Nyaya Sanhita, 2023 (BNS) are not made out. It is submitted that even if the allegation pertaining to illegal use of bio-stimulant HDPE in fertilizer, is to be taken into consideration, offences registered against the applicants would not justify insistence upon their physical custody. The applicant Gorakh Zabu Pawar has already appeared before the investigating officer and co-operated with the investigation and the applicant Ankush Zabu Pawar also undertakes to do so. On this basis, it is submitted that this Court may consider allowing the present applications. It was further submitted that the statement of Gorakh Zabu Pawar, recorded after the interim order dated 10.09.2024 was passed by this Court in his favour, would demonstrate that the actual act of manufacturing the aforesaid fertilizer with the bio-stimulant, was undertaken by the co-accused persons Prakash More and Gorakh Rathod. Both of them were arrested and released on bail within days of their arrest.

On this basis, it was submitted that the applications may be allowed.

6. On the other hand, the learned APPs opposed the prayer made in the present applications. Attention of this Court was invited to the statements of the applicant Gorakh Zabu Pawar recorded on 12.09.2024 and 13.09.2024. It was submitted that the said applicant has clearly conceded to the fact that he was financing the entire activity of manufacturing such fertilizer containing bio-stimulant, which violated the provisions of the Environment (Protection) Act, 1986; Fertilizer (Inorganic, Organic or Mixed) (Control) Order, 1985 as also the Essential Commodities Act, 1955. It was submitted that the company was in the name of the applicant Ankush Zabu Pawar and therefore, both the applicants were actively involved in the said illegal activity. On this basis, it was submitted that no indulgence may be shown to the applicants. It was submitted that offence of cheating under Section 318(4) of the BNS can be said to be made out because the labels on the product were obviously misleading and hence, this is a clear case of deception.

7. This Court has considered the rival submissions, in the light of the material on record. It is an admitted position that the applicant Gorakh Zabu Pawar appeared before the investigating officer as directed by this Court and his statements were indeed recorded on 12.09.2024 and 13.09.2024.

8. Although much is sought to be made out of the aforesaid statements of the applicant Gorakh Zabu Pawar, to indicate that the aforesaid statements and the other material that has come on record during the course of investigation, show the active involvement of the aforesaid applicants in manufacturing fertilizer by adding bio-stimulant, this Court is of the opinion

that the allegations levelled against the applicants, need to be examined to understand as to whether the ingredients of the offences registered against them, can be said to be *prima facie* made out.

9. In the present case, the investigating authority has registered the FIR on the basis of statement of the Fertilizer Inspector and District Quality Control Inspector of Agricultural Department, Nashik. The said informant states that on 27.07.2024, a police inspector called him on phone and informed him about the illegal activity concerning fertilizer and such products. Thereupon, the informant reached the place of offence alongwith *panchas* and the aforesaid illegally manufactured products were seized.

10. While the tenor of the aforesaid statement, leading to registration of FIR, would show that certain material containing illegally manufactured fertilizer, wherein bio-stimulant was used, was seized but, there is no reference to any person, who is said to have used such illegally manufactured fertilizer, under the impression that it was the kind of fertilizer as stated on the label and that being unaware of use of bio-stimulant in the fertilizer, any person had suffered consequences.

11. In other words, the essential ingredient of offence of cheating, as defined under Section 318 of BNS does not appear to be *prima facie* made out against the applicants. The essential ingredient of the said offence is that a person is deceived or dishonestly induced to deliver property to any other person on the basis of such deception. In the present case, *prima facie*, this Court is of the opinion that the FIR does not disclose any person, who was either dishonestly induced or who has suffered deception at the hands of the applicants to constitute the offence of cheating.

12. That leaves only the offences registered against the applicants, under the provisions of the Environment (Protection) Act, 1986; Fertilizer (Inorganic, Organic or Mixed) (Control) Order, 1985 and the Essential Commodities Act, 1955. This Court has perused the relevant provisions as invoked in the FIR and it is found that, at worst, the alleged offences may invite sentence of 1 year or upto 7 years of imprisonment. The collected material was sent for chemical examination and the learned APPs have informed this Court that the results indicate that the allegations made against the applicants, are justified.

13. But, considering the fact that there is total lack of material to show that such material was actually purchased by a consumer that could lead to offence of cheating, this Court is inclined to grant relief to the applicants, as they have undertaken to continue to co-operate with the investigation. It is noted hereinabove that the co-accused persons, who appear to have been actually actively involved in manufacturing the said products, have been released on bail within couple of days of their arrest. No fruitful purpose would be served by placing the applicants behind bars.

14. In view of the above, the interim order granted in favour of the applicant Gorakh Zabu Pawar is confirmed and Anticipatory Bail Application No.2391 of 2024 is allowed.

15. The following relief is granted in Anticipatory Bail Application No.2741 of 2024:

- (i) In the event the applicant Ankush Zabu Pawar is arrested in connection with FIR No.0161 of 2024 dated 28.07.2024, registered at Nashik Taluka Police Station, District Nashik Rural, he shall be released on bail

on furnishing PR Bond of ₹ 50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.

- (ii) The applicant shall remain present before the Investigating Officer on 14.10.2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when called by the Investigating Officer.
- (iii) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses and other persons concerned with the case.

16. Both the applicants shall continue to co-operate with the investigation and also in the proceedings before the trial court.

17. The condition recorded hereinabove, while granting bail to the applicant Ankush Zabu Pawar, in clause (iii), shall equally apply to the applicant Gorakh Zabu Pawar.

18. In the event, the applicants violate any of the conditions specified in this order, it shall be liable to be cancelled.

19. It is also clarified that the observations made in this order are limited to the disposal of the present applications and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

20. The applications stand disposed of.

(MANISH PITALE, J)