



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

CRIMINAL APPLICATION (ABA) NO.38/2024

Ankit Satishkumar Agrawal

..VS..

**State of Mah., thr.PSO PS Hinganghat, Taluka Hinganghat, District
Wardha**

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

Court's or Judge's Order

Shri P.W.Mirza, Counsel for the Applicant.
Shri S.C.Joshi, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 07/03/2024

PRONOUNCED ON : 14/03/2024

1. Heard.
2. Apprehending arrest at the hands of police in connection with Crime No.1519/2023 registered with the non-applicant/police station for offences punishable under Section 379 of the Indian Penal Code and under Sections 3 and 7 of the Essential Commodities Act, 1955, the applicant approached this court for grant of pre-arrest bail.
3. Accusations against the applicant are on the basis of report lodged by Arvind Lalsingh Rathod. As per the report, one Vilas Waghmare alleged to have committed theft of food grains reserved for Mid-Day Meal for school children. The Director of Education enter into an agreement with

NACOF (the agency) for supply of food grains under the Mid-Day Meal Scheme wherein the said agency has to supply food grains to various Government Sectors. The applicant is Sub-contractor and role of transporting rice was not assigned to him. His name is also not mentioned in the First Information Report.

4. The Division Bench of this Court (Coram : Vinay Joshi and Mrs.Vrushali V.Joshi, JJ.) held that principal allegations are against co-accused and directed the investigating agency not to file chargesheet against the applicant.

5. It is further submitted that agreement dated 3.3.2023, between the Director of Education and the agency, clarifies position on storage at godown of goods and shows that the storage is allowed. The allegation is based on assumption that goods are stored for other reason other than delivery to respective schools. No complaints are received from schools that they have not received stock under the Mid-Day Meal Scheme.

6. Learned counsel Shri P.W.Mirza for the applicant, submitted that as far as the applicant is concerned, there is an agreement between him and the agency wherein it indicates that in case of any irregularity in transportation

and distribution of rice, the agreement will be terminated. Till today, the applicant is continued with work of supply of goods which itself shows that there is no irregularity committed by him. Moreover, stock is already recovered. Custodial interrogation is not required. As such, the applicant be released on bail in the event of his arrest.

7. *Per contra*, learned Additional Public Prosecutor Shri S.C.Joshi for the State submitted that during investigation it revealed that the applicant entered into the agreement with the agency. There was an agreement between the agency and the Director of Education also. The said agency sublet contract to firm of the applicant for entire Wardha district. There are more than 222 schools in Hinganghat tahsil and as per demand, the stock is to be supplied for Mid-Day Meal Scheme under the Zilla Parishad and Panchayat Samiti. The applicant is responsible to supply/transport rice. Initial raid was conducted by the local crime branch and the stock was found in the godown. It revealed during investigation that co-accused Sahebrao Lonkar was engaged by the applicant to transport the said stock to various schools, but in stead of distributing the same, it was found in the godown of one Yadav Jeswani. It is the applicant who has lifted the stock and handed over to the co-accused. Thus, involvement of the applicant is

revealed. As such, custodial interrogation of the applicant is required.

8. After hearing learned counsel for the applicant and learned Additional Public Prosecutor for the State and perused investigation papers, it revealed that on 2.12.2023 Hinganghat Police conducted raid in the godown of “Kalajna Shivar” and it revealed that the said godown was obtained by co-accused Sahebrao Lonkar on rent. During the raid it revealed that said Lonkar stored food grains reserved for Mid-Day Meal Scheme. During investigation, it further revealed that initial agreement was between the Director of Education and the agency by which the applicant agreed to supply food grains to various schools under the Mid-Day Meal Scheme. The applicant who is businessman and proprietor of “Karuna Traders” entered into an agreement with the agency for transporting and supplying of food grains to various Government Schools for different schemes including Mid-Day Meal Scheme. It further revealed from the investigation that he had engaged the co-accused to transport the said food grains to various schools. Admittedly, the stock is recovered from the godown which is obtained by the co-accused on rent and owned by one Yadav Jeswani. The entire stock was recovered. In view of the agreement between the applicant and the agency, Clause

5(C) and clause 15(ii) clearly indicate that in case of any irregularity in transporting and distributing the rice, the agreement will be terminated. No doubt, the applicant is continued with the agreement and supplying food grains to various schools as there was no termination of agreement. It also reveals from investigation papers that none of schools made any complaints regarding supplying of food grains. Admittedly, the entire stock is recovered from the godown which is obtained by co-accused Sahebrao Lonkar. Said Sahebrao Lonkar was engaged by the applicant for supplying food grains. The applicant has also approached the Division Bench and the Division Bench also directed that though investigation may go on, chargesheet shall not filed without obtaining leave of the court. The applicant challenged that the complainant is not authorized person to lodge the report and the job of transportation was assigned to the co-accused.

9. Considering the fact that the stock is not recovered from the godown of the applicant and allegation against the co-accused that he was with responsibility of transporting the food grains, contention of learned Additional Public Prosecutor for the State that custodial interrogation of the applicant is required cannot be accepted.

10. Recently, it is observed by the Honourable Apex Court in the case of **Ashok Kumar vs. State of Union Territory, Chandigarh** (decided on 1.3.2024) that there is no gainsaying that custodial interrogation is one of effective modes of investigating into alleged crime. It is equally true that just because custodial interrogation is not required that by itself may also not be a ground to release an accused on anticipatory bail if offences are of serious nature. However, a mere assertion on the part of the State while opposing plea for anticipatory bail that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than *prima facie* why the custodial interrogation of the accused is required for the purpose of investigation.

11. In the light of the above observation, admittedly, the entire stock is recovered and, therefore, only for interrogation purpose, the custody of the applicant is not required.

12. It reveals that after ad *interim* protection was granted, the applicant cooperated with investigating agency. Moreover, there is nothing on record to show or indicate that without custodial interrogation, the investigating officer cannot investigate the crime.

13. In this view of the matter, the application is **allowed**. *Ad interim* order dated 16.1.2024 granting *ad interim* protection to the applicant stands confirmed. The applicant in the event of his arrested be released on bail on same terms and conditions as in the order granting *ad interim* protection.

The application stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!