



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.112 OF 2024

Subhash s/o Tripati Mishra
Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Bhamaragad, District Gadchiroli

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

Court's or Judge's orders

Mr. C. R. Thakur, Advocate for applicant.
Mr. N. B. Jawade, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 18/03/2024

1. The applicant came to be arrested on 06.01.2024 in connection with Crime No.25/2022 registered with Police Station Bhamaragad, District Gadchiroli for the offences punishable under Sections 420 and 407 read with Section 34 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by one Ashok Rama Usendi at Bhamaragad Police Station District Gadchiroli. As per the allegation, the present applicant was a driver on a truck bearing No. MH-40-CD-6739. As per the allegation the paddy quota which was to be supplied to the millers was handed over to the present applicant to supply it in Ma Jagdamba Rice Mill on 31.05.2022. The said Ma Jagdamba Rice Mill owned by Gopal Agrawal.

However, the said paddy was not delivered by the present applicant and it was disposed of by him. The paddy was worth of Rs.4,85,000/-. On the basis of the said report, police have registered the crime against the present applicant and another co-accused.

3. Learned Counsel for the applicant submitted that as far as the recovery of the paddy is concerned, which is not recovered during the investigation. Another co-accused is still absconding. He submitted that now the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. In fact, there is no material evidence against the present applicant to connect him with the alleged offence. Merely on suspicion he is arrested. Considering the offences alleged are punishable with imprisonment up to seven years, his further incarceration is not required and hence he be released on bail.

4. Learned APP Strongly opposed the said application and submitted that during the investigation the Investigating Officer has collected the truck transport pass which shows that it was handed over to the present applicant along with the paddy worth of Rs.4,85,000/- i.e. 625 gunny bags weighing 250 quintal. The vehicle particulars which are collected by the Investigating Officer also shows the name of the present applicant. The statement of

the relevant witnesses who were present while loading the said paddy in the truck of the present applicant also substantiates the said contention. Considering the *prima facie* case is made out against the present applicant and another co-accused is still absconding, the application deserves to be rejected.

5. Having heard the learned Counsel for the applicant and learned APP for the State, perused the investigation papers and the recitals of the FIR. The statements of the witnesses disclosed that the present applicant was a truck driver on a truck bearing No. MH-40-CD-6739. On 31.05.2022 the paddy was loaded of 250 quintals in the truck given by the present applicant for transporting it to the Miller owner of Ma Jagdamba Rice Mill, namely Shri Gopal Agrawal. The investigation papers further show that the said paddy was not delivered to the said rice mill and it was misappropriated. During the investigation, the statement of the witnesses who loaded the said paddy in the truck of the present applicant also substantiates the said contention. Now the investigation is completed and charge-sheet is filed. As far as the investigation material is concerned, sufficiently shows the involvement of the present applicant. However, it is well settled that bail is a rule and jail is an exception. The present applicant cannot be kept behind bar by way of punishment. Considering the fact that alleged offences are punishable with imprisonment of seven

years and now the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. The application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant **Subhash s/o Tripati Mishra** be released on bail in connection with Crime No.25/2022 registered with Police Station Bhamaragad, District Gadchiroli for the offences punishable under Sections 420 and 407 read with Section 34 of the Indian Penal Code, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall attend Bhamaragad Police Station District Gadchiroli on first of every month, till the culmination of the trial.
- (iv) The applicant shall furnish his cell phone number and address along with the names of his two relatives along with their address proof, before the trial Court.
- (v) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

The application disposed of.

(URMILA JOSHI-PHALKE, J.)