



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

CRIMINAL WRIT PETITION NO.426 OF 2024

Harji Sambhaji Rajegore,
Aged - 34 years,
Occupation-Business,
R/o Shelgaon, Post-Pimpalgaon
(Mahadeo Nanded), Maharashtra-431704,
Aadhar No – 381963731811.

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Petitioner

.. Versus ..

1. Collector, Nagpur District,
Collector Office, Near
Akashwani Chowk, Civil Lines,
Nagpur.
2. Police Station, Beltarodi,
Through Police Inspector,
Beltarodi Police Station,
Nagpur.

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Respondents

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Mr. M.P. Jain, Advocate for the Petitioner,
Ms. Kavita H. Bhondge, APP for the Respondents-State.
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CORAM : G.A. SANAP, J.
DATED : 10.07.2024.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally by the consent of the learned Advocates for the parties. Perused the record and proceeding.

2. The petitioner in this petition has questioned the correctness of Condition Nos.2 and 4 imposed by the respondent no.1 while passing the order dated 09.02.2024.

3. The petitioner is the owner of a Truck bearing registration No.MH-26-BD-9297. On 14.11.2023, Unit No.5, Crime Branch, Nagpur intercepted the said truck on Wardha road near Star Bus Depot, Khapri Naka, On inspection, the police officers found that there were 663 bags containing 36500 kilograms of rice belonging to the Public Distribution System (for short 'PDS'). The driver of the truck, on enquiry, disclosed that the wheat was loaded in the truck. He gave the bill of Atmaram Trading Company wherein there was a mention that the commodity purchased under the bill was cattle feed rice. The panchanama was drawn on the spot.

4. Unit No.5 of Crime Branch seized the truck and rice and registered Crime No.685/2023 at Police Station, Beltarodi for the offences under Sections 3 and 7 of the Essential Commodities Act, 1955 (for short 'E.C. Act.') against the petitioner, the truck driver and Atmaram Trading Company. Vide letter dated 15.01.2023, the Investigating Officer informed the Department of Food and Civil Supply, Nagpur regarding further investigation. On 23.11.2023, the Food Supply Officer, Nagpur, on enquiry, reported that there is a strong possibility that the seized rice was meant for PDS. The investigating officer made a report to the Collector for passing appropriate direction/order with regard to the seized rice and the vehicle.

5. After receipt of the information, the respondent no.1 issued Show Cause Notices. After granting them reasonable opportunity, respondent no.1-Collector passed the impugned order dated 09.02.2024. Respondent no.1 ordered the release of the goods and the vehicle to the petitioner on furnishing bank guarantee.

6. This order was challenged by the petitioner before the Sessions Court by filing Criminal Appeal No.36/2024. Learned Additional Sessions Judge dismissed the appeal and confirmed the order passed by respondent no.1 -Collector.

7. Learned Advocate for the petitioner submitted that the order passed by respondent no.2 directing him to furnish the bank guarantee is onerous and, therefore, cannot be sustained. Learned Advocate would submit that the valuation of the truck made by the Competent Authority is not proper. Learned Advocate, in order to substantiate his submission, has relied upon the following decisions of this Court, wherein in a similar situation, while releasing the vehicle, the condition of furnishing bank guarantee was modified and substituted by the condition of furnishing solvent surety. In the last judgment which pertains to release of the commodity, by modifying the condition of bank guarantee, the accused was directed to furnish the solvent surety. The decisions are as under :

(1) *Syed Kadir Syed Isaq .vs. The State of Maharashtra and another, reported in 2014 ALL MR (Cri) 1704.*

(2) *Dinesh s/o Deepakkumar Bhaktani .vs. Collector,*

Nagpur District Collector Office and another, reported in 2016 ALL MR (Cri) 4177.

- (3) Criminal Writ Petition No.502/2009 (Dinesh Janardhan Rangari .vs. The Additional Collector (Essential Commodities) Collectorate, Nagpur and another, dated 9th December, 2009.*
- (4) Criminal Writ Petition No.95/2016 (Dinesh s/o Deepakkumar Bhaktani .vs. Collector, Nagpur District Collector Office and one, dated 23rd February, 2016.*
- (5) Criminal Writ Petition No.242/2011 (Gurucharan Singh s/o Joginder Multani and one .vs. State of Maharashtra and one, dated 6th May, 2011.*
- (6) Criminal Revision No.97/2020 (Shri Mohsin Beg Shabbir Beg .vs. The Collector, Buldana, dated 08/09/2020.*
- (7) Criminal Writ Petition No.999 of 2014 (Shri Vikas son of Shri Bhaurao Meshram .vs. Collector, Nagpur District Collector Office and one, dated 5th December, 2014.*
- (8) Criminal Writ Petition No.161/2021 (Shri*

Annopsingh Jagitsingh Bhatia .vs. Collector, Nagpur District and one, dated 26th February, 2021.

(9) Criminal Writ Petition No.136/2021 (Mohd. Riyaz Qadir Miya Sheikh .vs. Collector, Nagpur District and one, dated 26th February, 2021.

(10) Criminal Writ Petition No.1000/2014 (Shri Pramod son of Manikrao Thakre .vs. Collector, Nagpur District and one, dated 5th December, 2014.

8. Learned Additional Public Prosecutor submitted that while deciding the Criminal Writ Petition No.1000 of 2014 (Shri Pramod son of Manikrao Thakre .vs. Collector, Nagpur District and one, dated 5.12.2014), the Government Resolution dated 30.8.2005 was not considered. Learned Additional Public Prosecutor submitted that as far as the vehicle is concerned, the valuation of the same has been done. Learned Additional Public Prosecutor submitted that as far as the vehicle is concerned, keeping in mind the various decisions relied upon as above by the learned Advocate for the petitioner, the Court may pass an appropriate order. As far as the commodity is concerned, learned Additional Public Prosecutor submitted that the condition directing the petitioner to furnish the

bank guarantee equivalent to the price of the commodity, is just and proper.

9. I have gone through the record and the proceedings. Learned Additional Sessions Judge has considered the provisions particularly Sections 6 and 8 of the Essential Commodities Act and the relevant Government Resolution of 2005 and concluded that the order passed by the respondent no.1 was just and proper.

10. The valuation of the truck has been done. Similarly the valuation of the commodity has been done. As far as the condition with regard to the release of the commodity/goods is concerned, I am not inclined to modify the said condition. The said condition is completely in consonance with the Government Resolution dated 30.08.2005. It is further seen that as per Condition Nos.2 and 3, it has been stated that if the petitioner fails to comply Condition No.2, then the commodity shall be sold through PDS mode. As far as Condition Nos.2 and 3 are concerned, I do not see any reason to interfere with and modify the same.

11. As far as Condition Nos.4 and 5 are concerned, in my view, the same pertain to release of the vehicle. The respondent no.1 has directed the petitioner to furnish the bank guarantee equivalent to 100% price of the vehicle. The price of the vehicle has been stated in the order. Clause No.5 of the order provides for sale of the vehicle by public auction, if the petitioner fails to exercise the option given under Clause 4.

12. In my view, the condition to release the vehicle subject to furnishing a bank guarantee, in the fact situation, is found to be onerous and, therefore, it deserves to be modified. Accordingly, the said condition is modified. The petitioner shall furnish the solvent surety instead of bank guarantee, as provided under Clause 4 of the impugned order.

13. The Criminal Writ Petition is partly allowed in the above terms. Rule is made absolute in the above terms.

[G.A. SANAP, J.]