

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 6143 OF 2016

1. VIJAY MACHINDRA MARKAD
2. MAHAVIR CHAINSUKHLAL GUNDECHA

VERSUS

STATE OF MAHARASHTRA

Advocate for Applicants : Mr. Vijaykumar D. Sapkal.
APP for Respondent : Mr. S. S. Dande.

...
CORAM : **P. R. BORA, VJ.**
DATE : 31st October, 2016.
(Vacation Court)

P.C.:

1. Heard Shri V. D. Sapkal, learned counsel for the Applicants.

2. The Applicants have filed the present application apprehending their arrest in a crime registered at Sonai Police Station for the offences punishable under Sections 3 and 7 of the Essential Commodities Act. The learned counsel submitted that if the FIR is perused, there is no material to support the allegations made by the Informant so as to apply Sections 3 and 7 of the said Act. The learned counsel further submitted that merely on noticing the gunny bags bearing seal of the State Government, it has been presumed by the Police Authorities that the goods, which were being carried in the

vehicle, were from fair price shop. The learned counsel submitted that the gunny bags, because of which an inference has been drawn that the goods were from fair price shop are easily available in the market. The learned counsel submitted that the Government itself is auctioning such used and non-used gunny bags and the auction purchaser is at liberty to sale the said bags in the market. The learned counsel submitted that merely on the said ground no such inference could have been drawn that the goods were of fair price shop and were transported for being sold in the open market. The learned counsel submits that the learned District Judge has rejected the relief to the present Applicants for wrong reasons. The learned counsel submitted that the Applicants are ready to cooperate the police machinery for carrying further investigation and will abide by the conditions which may be imposed by this Court.

3 Shri Dande, learned APP opposed for granting bail. Inviting my attention to the observations made by the learned District Judge in paragraph Nos.9, 10 and 11 of the order dated 25th October, 2016, the learned APP submitted that no case is made out for granting any relief to the Applicants. The learned APP submitted that unless the Applicants are taken into custody no further investigation is

possible.

4 I have considered the submissions made on behalf of the learned counsel appearing for the respective parties. I have also perused the Fir and other material placed on record. I have also gone through the order passed by the learned District Judge on 25th October, 2016. On perusal of FIR there appears substance in the contentions so raised by the learned counsel. It appears that the vehicle was apprehended and after noting that rice was being carried in the gunny bags having Government seal, the vehicle was taken to police station and on presumption that the goods were from fair price shop, the offence has been registered and investigation has been set in motion. It appears to me that merely because rice was carried in gunny bags, no such conclusion could have been drawn by the police officers. Even otherwise the goods are now in the custody of police and the vehicle has also been taken in custody by the police. In the above circumstances, custodial interrogation of the Applicants does not appear necessary. I am therefore inclined to allow the application by imposing certain conditions. Hence the following order:

ORDER

I. Criminal application is allowed.

- II. In the event of arrest of the Applicants, they be released on furnishing bond in the sum of Rs.15,000/- each and on furnishing solvent surety in the like amount.
- III. The Applicants are directed to cooperate the investigating agency to carry out the further investigation and to remain present in the police station as and when called by the police.
- IV. Parties to act on an authenticated copy of this order.

[P. R. BORA]
(JUDGE)

ndm