

**Court No. - 73**

**Case :- CRIMINAL MISC ANTICIPATORY BAIL  
APPLICATION U/S 438 CR.P.C. No. - 1796 of 2021**

**Applicant :- Ram Narayan**

**Opposite Party :- State of U.P.**

**Counsel for Applicant :- Purushottam Dixit**

**Counsel for Opposite Party :- G.A.**

**Hon'ble Siddharth,J.**

Learned counsel for the applicant is permitted to add Section 3/7 in this application, during the course of the day.

Heard learned counsel for the applicant and learned AGA for the State.

The instant anticipatory bail application has been filed on behalf of the applicant, **Ram Narayan**, with a prayer to release him on bail in **Case Crime No. 0359 of 2020, under Section- 3/7 of Essential Commodities Act, Police Station- Khaga, District- Fatehpur**, during pendency of trial.

Prior notice of this bail application was served in the office of Government Advocate and as per Chapter XVIII, Rule 18 of the Allahabad High Court Rules and as per direction dated 20.11.2020 of this Court in **Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 8072 of 2020, Govind Mishra @ Chhotu Versus State of U.P.**, hence, this anticipatory bail application is being heard. Grant of further time to the learned A.G.A. as per Section 438 (3) Cr.P.C. (U. P. Amendment) is not required.

The applicant has been implicated for offence under Section 3/7 Essential Commodities Act. This Court in the case of **Smt. Shakila Vs. State of U.P. and Another, Application under Section 482 No.44486 of 2012** has held as follows:-

*"The question that falls for determination in this case is whether special court which ceased to be Special Court under the provisions of Essential Commodities (Special Provisions) Act, 1981 still has jurisdiction to take cognizance of an offence or to remand the accused to the custody who is implicated for the offence under Essential Commodities Act, 1955. Essential Commodities Act, 1955 (hereinafter referred to as "Principal Act") provides for regulation of*

production, supply and pricing of essential commodities. This Act had been amended from time to time. In spite of extensive amendments made to the Principal Act, some of the existing provisions of that Act have not been adequate and effective for expeditious disposal of the cases as well as ensuring availability of the essential commodities at fair prices and for curbing hoarding and black-marketing of and profiteering in, such commodities. Moreso, there were large number of court cases pending under the Principal Act all over the country. For dealing more effectively with persons indulging in anti-social activities, it was considered necessary to make special provisions by way of amendments to the Principal Act for temporary period of 5 years and viewed with this perception, special provisions were brought by way of amendment to the Principle Act. The Essential Commodities (Special Provisions) Act, 1981 (hereinafter referred to as 'Special Provisions') consequently came into force w.e.f. 1.9.1982 in all the States and Union Territories. This special provision was enforced initially for a period of 5 years and was extended for further period of 5 years i.e. 1987 to 1992 and thereafter from 1992 to 1997. The Special provisions were enforced till 13.8.1997. Thereafter the Essential Commodities (Special Provisions) Ordinance, 1997 (Central Ordinance 21 of 1997) was promulgated. As there was no enactment the Essential Commodities Amendment Ordinance 1998 (Central Amendment Ordinance 13 of 1998) was promulgated by the President. The above Ordinances lapsed since they were not replaced by enactments, as a result of which, Special Courts established under Section 12-A for trial of Essential Commodities Act cases ceased to function. Consequentially position that followed was that cases registered under the Essential Commodities Act were to be tried before the Magistrate having jurisdiction as it was being done prior to the enactment of Essential Commodities (Special Provisions) Act, 1981. In view of above, Special Provisions remained in force till 8.7.1998. In pursuance of the notification of State Government, dated 3.10.1998 High Court issued circular dated 30.3.1999 which is quoted below:

"Essential Commodities (Special Provisions) Act, 1981 and Essential Commodities Ordinance, 1998 have become ineffective from 31.3.1997 and 8.7.1998 C.L. No.5/Admin.A 3 dated: 30 March,1999

I am directed to refer the letter no. Bha.Sa.64/29.7.1998- 102/98, dated 3.10.1998 of Sri Prabhat Chandra Chaturvedi, Secretary Government of U.P. Addressed to all the District Magistrate of the State (copy enclosed), on the above subject, and to say that on consideration of the matter court has been pleased to order that being the provision of Essential Commodities (Special Provisions) Act, 1981, read with Essential Commodities Ordinance 1998 ineffective by virtue of non-extension of power the Section 6 (e) of U.P.General Clause Act, 1904 provides that the cases in which cognizance have been taken shall continue to be tried by the Special Judge.

**I am further directed to say that so far as new cases, which have arisen out of essential commodities Act, 1955 after 8.7.1998, cognizance shall be taken as per the provision of**

**said act by Magistrate having jurisdiction of the cases".**

*On a fair reading of circular issued by this Court, it is borne out that the Essential Commodities (Special Provisions) Act and Ordinance 1998 became ineffective by virtue of non-extension of power. The cases in which the cognizance has already been taken by the Special Judge shall continue to be tried by the Special Judge in view of Section 6 (e) of U.P. General Clauses Act, 1904. It was clarified that in the cases which have arisen from Essential Commodities Act, 1955 after 8.7.1998, cognizance shall be taken as per the provisions of said Act by the Magistrate having jurisdiction of the cases. Resultantly, the above Act and Ordinance lapsed, since they were not replaced by the enactments as a result Special courts established for the trial of the cases of essential commodities ceased to function. Consequently, the position is that cases registered under the Essential Commodities Act are now to be tried before the Magistrate having jurisdiction as it was being done prior to the Essential Commodities (Special Provisions) Act, 1981. It is not disputed that prior to the enforcement of Essential Commodities (Special Provisions) Act, 1981, the cases under the Essential Commodities Act were being tried by the Area Magistrate within their respective territorial jurisdictions. It is discernible from the above facts that during the period Essential Commodities (Special Provisions) Act was in force, special courts constituted for trial of offence under the provisions of Essential Commodities Act had exclusive jurisdiction to try such cases. Special courts had also power to pass order or remand under Section 167 Cr.P.C. and take cognizance of offence but the position has now changed after Essential Commodities (Special Provisions) Act, lapsed by efflux of time. Thereafter the position that used to prevail before the Essential Commodities (Special Provisions) Act, stood restored and Judicial Magistrates who were previously competent to try the essential commodities cases got the jurisdiction to deal with such cases. Since Essential Commodities (Special Provisions) Act, 1981 had lapsed, the power of the learned Magistrate to take cognizance of an offence under the cases of Essential Commodities Act, 1955 stood restored. However, due to non-extension of power, by virtue of Section 6 (e) of U.P. General Clauses Act, 1904 the cases in which cognizance have already been taken before the special provisions became ineffective, shall continue to be tried by the Special Judge concerned."*

**The Madhya Pradesh High Court in the case of *Dinesh Kumr Dubey and Another Vs. State of M.P.*, M.Cri.C. No. 3530 of 2020, 2001 CriLJ 1306 has held as follows:-**

*"2. It appears that by the [Essential Commodities \(Special Provisions\) Act, 1981 Section 10A](#) of the original Act of 1955 was amended and after the word 'Cognizable', the words 'and non-bailable' were introduced. The said Act of 1981 was to remain in force for a period of five years only from the date of commencement of 1981 Act. Thereafter by the [Essential Commodities \(Special Provisions\) Continuance Act, 1987](#) Para 2 of the preamble of 1981 to the [Essential Commodities \(Special Provisions\) Act, 1981](#) was amended and in place of five years period of 10 years was substituted. Thereafter by Third*

*Amendment, the said period of continuance was made for fifteen years. After expiry of fifteen years no amendment Act was brought into force but certain ordinances were issued. The last of the ordinance was issued in the year 1988, which lost its life and efficacy by lapse of time thereafter no Act or ordinances have been issued to continue the provisions of 1981 Act. Learned counsel for the State was given opportunity to go through the provisions of law and report to the Court as to whether after 1988 any further Act has been brought in existence or any other ordinance was issued to continue the effect of 1981 Act. Learned counsel for the State submits that despite his best efforts he could not find any other Act or ordinance which continues the effect and operation of 1981 Act.*

*3. If 1981 Act has lost its life then any amendment incorporated by the said Act, which was to remain in force for a period of five, ten or fifteen years would come to an end and additional words, "And non-bailable" shall become non-est and otios. [Section 10A](#) without the said amendment shall now be read as "Notwithstanding anything contained in [the Code](#) of Criminal Procedure, 1973 every offence punishable under the Act shall be 'Cognizable'."*

*4. In view of the above legal provisions the offence is not non-bailable. Cognizance of such an offence can be taken but in the absence of any other provisions showing the offence to be non-bailable, the offence would continue to be bailable in view of Schedule-II to [the Code](#) of the Criminal Procedure, 1973.*

*5. As the offence is bailable, an application under [Section 438, Cr.P.C.](#) would not be maintainable. However, taking into consideration that the police and the administration is not likely to know about these provisions and the interpretation, it is hereby directed that because the offences are bailable, in the event of the arrest of the applicants the officer arresting the applicants shall release them on bail treating the offence to be bailable. In the alternative, the applicants may appear before the Special Court alongwith the copy of this order and furnish bail to the satisfaction of the said Court."*

The above legal position is not clear to most of the Investigating Officers and the courts below and therefore, the bail application of the accused persons in such cases are rejected by the Magistrate and the special courts treating the offences to be non-bailable. Hence, it would be appropriate to protect the applicant's interest for limited period.

In the event of arrest, the applicant shall be released on anticipatory bail till the submission of police report, if any, under section 173 (2) Cr.P.C. before the competent Court on furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Station House Officer of the police station concerned Court with the following conditions:-

(i) The applicant shall make himself available for interrogation by the police officer as and when required;

(ii) The applicant shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade from disclosing such facts to the Court or to any police officer;

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. concerned.

(iv) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

(v) The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

In default of any of the conditions, the Investigating Officer/Govt. Advocate is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

The Investigating Officer is directed to conclude the investigation, if pending, of the present case in accordance with law, expeditiously, independently without being prejudiced by any observations made by this Court while considering and deciding the present anticipatory bail application of the applicant.

The applicant is directed to produce a copy of this order downloaded from the official website of this Court before the S.S.P./S.P. concerned within ten days from today, if investigation is in progress, who shall ensure the compliance of present order.

**Order Date :- 29.1.2021**  
Ruchi Agrahari