

In the Court of Sessions Judge, Supaul

A.B.A.-79/2026

(Arising out of Birpur PS Case No:-429/2025)

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the witnesses namely Amit Kumar and S.I(GD) Hamir Singh and they have duly supported the recovery of the Urea Fertilizer from the house of the accused/petitioners. Similarly, the police has also recorded the statement of witnesses namely Sushil Kumar Ram and constable Vikash Singh. In this case, both the accused/petitioners are neither the retailer nor the shopkeeper of the Urea and they kept the same for the agricultural purposes.

Ld. Counsel for the accused/ petitioners also argued that the offence u/s- 7 of E.C. Act are bailable one and he relied upon the judgements of namely **“Tilak Manjhi And others Vs. State of Bihar And another”** and **“Rakesh Kumar Vs. State of MP”**. In the said judgement of **“Tilak Manjhi And others Vs. State of Bihar And another”** Hon’ble High Court while considering the cancellation of bail, granted to the accused under E.C.Act, held that it is true that in the impugned order, Court below has observed that Section of E.C.Act is bailable, which according to the petitioners is non-bailable and this submission of learned counsel of petitioners has not been challenged on behalf of opposite party No.2 but this was not the only ground on which opposite party No.2 was granted bail. Similarly in **“Rakesh Kumar Vs. State of MP”** M.Cr.C. No.26957 of 2020, Hon’ble High Court, MP has held that the offence punishable u/s- 7 of E.C.Act is bailable one, an application under Section 438 of Cr.P.C is not maintainable. But keeping in view the relevant provision as well as the possibility of the non-awareness of the relevant provisions of Act of 1955 and amended act, 1981 and the interpretation, it would be appropriate to direct the arresting officer/ authority that in the event of arrest of applicant, the officer arresting the applicant shall release the applicant on bail treating the offence to be bailable.

Similarly, in the recent **“judgement in Jagannath Vs. State of MP”** dated 22.12.2022, the Hon’ble High Court, M.P has granted to the anticipatory bail while considering the offence punishable u/s- 3/ 7 of E.C. Act is bailable one. Earlier in **“Pushpendra Yadav Vs. State of M.P”(Gwalior Bench)**, M.P, High Court dated 11.07.2023 was allowed the anticipatory bail of the accused for the offence punishable u/s- 7 of E.C.Act and relied upon the judgement passed in **“Santosh Sahare Vs. State of M.P”** dated 07.05.2015 in M.Cr.C No.2914/2015 and held that:-

(1) Firstly, I would like to reproduce the relevant provision of Act of 1955 to clear the position as to whether offence under section 3/7 of Essential Commodities Act, 1955 is bailable or non-bailable.

(2) Section 10(A) of the Act of 1955 reads as under:-

“Offence to be cognizable and bailable notwithstanding anything contained in Contd.

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the Code of Criminal Procedure 1973- every offence punishable under the Act shall be 'cognizable' (xxx)2.

(xxx)2. अधिनियम क. 92 सन् 1976 द्वारा दस वर्षों के लिए तत्पश्चात् अधिनियम क. 18 सन् 1981 द्वारा (दि.1.9.1982 से) दस के स्थान पर पन्द्रह वर्षों के लिए, शब्द " और अजमानतीय" स्थापित किये गए थे। दि. 31.8.1997 को पन्द्रह वर्ष पूर्ण हो जाने के कारण धारा अपने मूल रूप में स्थापित।

(3) From the bare perusal of aforesaid section it appears that by the Essential Commodities (Special Provision) Act-1981 Section 10(A) 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 be remain in force for a period of 5 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 5 years, period of 10 years was substituted. Thereafter by Third Amendment, the said period of continuance was made to 15 years. After expiry of 15 years no amendment Act was brought into force but certain ordinance were issued. The last ordinance was issued in the year 1988, which lost its life and efficacy by lapse of time. Thereafter no Act or ordinance has been issued to continue the Provisions of 1981 Act.

(3) When 1981 Act has lost its life, then any amendment incorporated by the said Act which was to remain in force for a period of 5, 10, 15 years would come to an end and additional words 'and non-bailable' shall become 'non-est' and 'otiose' Section 10(A) 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 provision, the offence is not non-bailable. Cognizance of such an offence can be taken but in the absence of any other provision showing the offence to be nonbailable, the offence would continue to be bailable in view of schedule II of the Code of Criminal Procedure, 1973.

(5) Therefore, as the offence is bailable, an application under section 438 of Cr.P.C would not be maintainable. However, keeping in view the relevant provision as well as the possibility of the non-awareness of the relevant provisions of Act of 1955 and amended Act, 1981 and the interpretation, it would be appropriate to direct the Arresting Officer/ Authority that in the event of arrest of applicant, the officer arresting the applicant shall release the applicant on bail treating the offence to be

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bailable.

Hence, taking into consideration all the facts and circumstances of the case, both the accused/ petitioners are entitled to get the benefit of anticipatory bail. Therefore, the prayer for anticipatory bail of both accused/ petitioners stands **Allowed** and in the event of their arrest or surrender before the court within 15 days from the date of receipt of a copy of this order, petitioners are directed to be released on furnishing bail bonds of Rs.20,000/- each with two sureties of like amount each to the satisfaction of Learned Court below with condition that they shall abide by all the conditions laid down in section 482 of B.N.S.S and one of the bailor must be family member or close relative.

Dictated
-Sd-
(Anant Singh)
Sessions Judge, Supaul