

**(CNR No.MHRG14-001145-2022)**  
**(The State V/s. Darshan Mavaji Gori & Ors.)**  
**ORDER BELOW EXHIBIT 28 IN REGULAR CRI.CASE No.219/2022**

1. The present application is filed by accused No. 2 praying to discharge him in C.R. No.202/2022 of Uran Police Station, Uran alleged to be offence punishable under sections 3, 7, 9 & 10 of the Essential Commodities Act and Sections 7 & 13 of the Public Distribution Scheme (Control Order), 2015.

2. It is contended by the applicant/accused No.2 that, the case lodged against him is false and frivolous. As per the prosecution case, on 30.07.2022 complainant Mr.Birajdar (Supply Inspector) has raided one godown namely In Line Shipping Pvt. Ltd., Jasai at Jasai and he found that accused No. 1 Darshan Gori, who is running rationing shop under name as 'New Society Centre' has not distributed rationing wheat within ration card holders and accused No. 2 Rakesh Dhir without verifying the details of wheat and bills in respect of them has purchased approximately 10 to 12 tons wheat with intend to export it, thereby have violated orders of Government & thereby committed offence punishable under sections 3, 7, 9 & 10 of the Essential Commodities Act and Sections 7 & 13 of the Public Distribution Scheme (Control Order), 2015. It is contention of the accused that he has not committed any offence. He has purchased wheat from New Society Centre by making on-line payment and by taking bill of G.S.T. The wheat purchased by him is not rationing wheat. Accused No. 1 also trades in name New Society Centre and purchases wheat from open market. Thus, accused No. 1 has purchased wheat which is of open market and not of rationing.

Accused No. 2 has purchased wheat @ Rs. 22/- per kg. from accused No. 1. There is no evidence on record to show that he has purchased rationing wheat from accused No. 1. No one has filed any complaint for not receiving wheat from accused No. 1. Prosecution has examined wheat found in possession of accused No. 2, as per report it is not of rationing. Thus, accused No. 2 submitted that, there is not material evidence on record and no prima-facie case against the accused No.2, the charges leveled by the State are groundless. Thus, the accused No.2 is entitled for discharge.

3. Learned A.P.P. filed his say at Exh.29 and denied contentions of the application. It is contended by the State that, in godown Nos. 1 & 5 wheat bags printed as Government of Rajasthan, Government of Hariyana, Government of Madhya Pradesh & Bhartiya Khadya Nigam were found. On examination of these bags wheat of rationing was found. At the time of inquiry he found that accused Nos. 3 & 4 were found to have committed offence punishable under sections 3, 7, 9 & 10 of the Essential Commodities Act and Sections 7 & 13 of the Public Distribution Scheme (Control Order), 2015. In godown total 46,787 bags containing 2339 ton of wheat were found, out of it 12 ton wheat was confiscated by state. Accused No. 1 is running rationing shop and he has sold wheat of ration to accused No. 2. Accused No. 1 has given memorandum that he was selling wheat of ration to accused No. 2 by changing bags of Government and putting it in private bags. Accused No. 1 has sold 5000 kg. wheat on 05.05.2022 and 5000 kg. Wheat on 07.05.2022 and receipts of the same are on record. There is no evidence on record that accused No. 1 has directly purchased this wheat from farmers. Thus, it

reflects that accused No. 1 has sold wheat of ration and accused No. 2 has purchased it. Accused No. 2 has kept this wheat in godown of accused No. 3. The seized wheat is essential commodity which is illegal to be kept without permission and also prohibited from sell to private persons. Thus, there is violation of E. C. Act. As per section 14 of E. C. Act, seized muddemal is found in possession of accused, thus it is the duty of accused to prove its legality. There is ample evidence against accused No. 2. Hence, learned A.P.P. prayed for rejection of the application.

4. Perused application, say and documents on record. Heard both sides.

5. Advocate for the accused argued that, it is case of the prosecution that accused No. 2 has purchased wheat of ration from accused No. 1, thus, accused has committed offence punishable under sections 3, 7, 9 & 10 of the Essential Commodities Act and Sections 7 & 13 of the Public Distribution Scheme (Control Order), 2015.

6. As per Section 3 of E.C.Act, *if the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.* Prosecution has produced on record F.I.R.,

spot panchnama, statements of witnesses, orders of Collector, reports of District Supply Officer, Mumbai, report of Lab of Pune, copy of order of Public Distribution Scheme (Control Order), 2015 (Sr.No.116), notification dated 13.05.2022 of Central Government (Sr.No.138), orders of State Government of Maharashtra, receipts of purchase of wheat & other documents.

7. As per case of prosecution it is the accused No. 1 who is running rationing shop namely 'New Society Centre' who has sold wheat to Pride Agro Fresh L.L.P. i.e. company of accused No. 2. It is defence of accused No. 2 that he has not purchased wheat of ration. It is also contention of the accused No. 2 that accused No. 1 has produced his account of ration. As per record, there are timely entries of supply inspector, showing that the record of ration shop of accused No. 1 has no infirmity nor they have recorded any irregularity in respect of quota, sale or stock and record was as per norms provided by the State Government. The investigating officer has produced relevant record of accused No. 1 in respect of quota and other record scrutinized by Supply Inspector at Sr.No.91. Thus, if there is proper distribution of wheat of ration to card holders, there could not be any stock of wheat to be supplied to accused No. 2. Thus, he has not committed any offence as alleged by State. He has purchased wheat from New Society Centre by paying G.S.T. through on-line payment. It is argued by advocate for accused No. 2 that if, accused No. 2 has purchased wheat of ration, how he could have paid to accused No. 1 on-line. There are purchase bills showing G.S.T. number. Accused No. 1 is running rationing shop and also doing sale of wheat and accused No. 2 has purchased the wheat from

accused No. 1 otherwise than of ration. Thus, he prayed to discharge accused.

8. On perusal of record it reflects that prosecution has relied upon bulky documents. I have gone through it. It is case of prosecution that accused No. 1 is running rationing shop, he cannot do business of private sale of food grains. Thus, sale of wheat from accused No. 1 to accused No. 2 is illegal. It seems from the record that accused No. 2 has purchased wheat from accused No. 1. He has paid bills of accused No. 1 and accused No. 1 has issued bill showing G.S.T. number. Hence, it is the sale is in question & not purchase. It also has to be looked that whether accused No. 1 has any right to sale wheat to private persons. For this purpose document produced along with list No.113, will be helpful. This is statement of Tahsildar Uran in which it is stated that rationing shop owners can do private business with private persons. He has also referred Government Resolution issued by Government of Maharashtra dated 09.03.2020. On perusal of this statement it reflects that rationing shop owner can do private business from their rationing shop of selling goods available in open market. Thus, it reflects that accused No. 1 has right to sale of wheat, which is available in open market and accused No. 1 has also right to sale it from his rationing shop.

9. It is alleged by prosecution that accused No. 2 has purchased wheat of ration. But from perusal of F.I.R., spot panchnama and other material available on record, it reflects that prosecution has not produced any relevant material evidence on record to show that the wheat found in possession of accused No. 2

is a wheat sold to him by accused No. 1 from his rationing quota. The material evidence on record in respect of record of accused No. 1's rationing shops documents, there is no material evidence against accused No. 2. It is part of evidence to prove that whether accused No. 1 has any wheat of ration or not, but there is no single documentary evidence on record to show that the accused No. 1 sold wheat of ration to accused No. 2. Prosecution has also relied upon reports of Government of Maharashtra, State Public Health Laboratory, Pune produced along with document at list No.106. This report is dated 14.09.2022. There are total two reports. In both these reports it is confirmed by food analyst of lab that they cannot confirm whether the wheat collected and sent for examination is of rationing or not. Thus, the wheat found in possession of accused No. 2 reflects to be not of ration. Thus, this material scientific evidence also goes against prosecution and in favour of accused No. 2.

10. It is contention of accused No. 2 that he is having business of export of wheat. For this purpose he purchases wheat from whole India. The prosecution has investigated in respect of business of accused No. 2 in States of Madhya Pradesh, Gujarat, Utter Pradesh and in Maharashtra. From investigation report in these States nothing helpful and of evidenciary value found against accused No. 2. It can be seen from documents produced at Sr.Nos.107 to 110 that, various traders and companies have sold tons of wheat to accused No. 2. These are reports of investigating teams in respective States as mentioned in their reports. It is mentioned in these reports that they have not found any incriminating evidence against accused No. 2 from their investigation into State of Madhya

Pradesh, Utter Pradesh, Gujarat and Maharashtra. Thus, it reflects that the wheat of accused No. 2 found in godown of accused No. 3 is purchased from various traders and companies of State of Madhya Pradesh, Utter Pradesh, Gujarat and Maharashtra.

11. It is also allegation of the prosecution that wheat of accused No. 2 is found in Government's bags. On perusal of the F.I.R., it reflects that, complainant Supply Inspector Birajdar has mentioned that he found five bags of wheats printed as Government of Rajasthan, six bags of wheats printed as Government of Hariyana, four bags of wheats printed as Government of Madhya Pradesh & seven bags of wheats printed as Bhartiya Khadya Nigam. Thus, he confirmed that these bags of wheat are of rationing wheat. Thus, it is allegation of prosecution that as some bags of various State Governments found in godown, the wheat in these bags is of rationing. For this purpose document produced by prosecution along with list at Sr.No.113, will be helpful. This is statement of Tahsildar Uran in which it is stated that after sale of wheat by rationing shop, they can sale or use the bags of Government for another purpose. Thus, it is legal to use bags of Government for use of it in any other private transaction. On perusal of this statement it reflects that it is lawful to use the bags of Governments after its use by rationing shop owners. This fact is also reiterated by various traders and companies that in their private transaction they re-use bags of Governments in their sale of wheat. Thus, if only bags of Governments found in godown, it does not mean that accused No. 2 has purchased wheat of ration. There should be concrete evidence to show that accused No. 2 has purchased wheat of ration from accused No. 1. But as earlier

discussed there is no evidence on record to show that accused No. 2 has purchased wheat of ration from accused No. 1. It is the accused No. 1 who have to explain about there bags & not accused No. 2 to explain. The burden is on accused No. 1 & not upon accused No. 2.

12. It is also allegation of the prosecution that accused No. 2 has not verified that wheat purchased by him from accused No. 1 is not of rationing. For this purpose advocate for accused No. 2 argued that accused No. 2 has purchased wheat from accused no. 1 at the prevailing rate of market i.e. Rs.22/-. He further argued that accused No. 1 in his memorandum stated that he purchases wheat from local traders and farmers. It can be seen from record that memorandum made by accused No. 1 in respect of wheat is his self knowledge and not of accused No. 2. He has not stated any where that he along with accused No. 2 has developed business of sale of wheat of ration. Rather from his statements it reflects that he has shown wheat, in memorandum panchnama dated 17.08.2022, as purchased from A.P.M.C. market. Thus, it reflects from record available that accused No. 2 has no knowledge about wheat. It is the seller i.e. accused No. 1 who has only knowledge about from where this wheat is brought. Thus, from all over evidence it reflects that accused No. 2 has no knowledge about source of wheat.

13. Ld. A.P.P. for State argued that as per section 14 of E.C. Act, burden is upon accused No. 2 to prove that wheat found in his possession is not of ration. But as per section 14 the burden of proving is lies on the person prosecuted for contravening order under section 3 prohibiting from being in possession of a thin without

lawful authority or without any document. In this case accused No. 2 is alleged to having found in possession of wheat of ration. But as earlier discussed there is no evidence on record to show that accused No. 1 has sold wheat of ration to accused No. 2. Thus, the burden as per section 14 lies on the accused No. 1 that he have to prove that he has not sold wheat of ration. Thus, this section not applies to accused No. 2.

14. As per section 239 of Code of Criminal Procedure, the accused is entitled to be discharged when the charge seems to be groundless. The meaning of groundless is defined in Mahantaswamy V/s. State 1987 Cr.L.J. 497 (Karnataka). Wherein the word groundless is defined as where no reasonable person come to the conclusion that there was any ground to sustain the charge against the accused. In present case there is no material evidence against accused No. 2. Only on alleged statement of accused No. 1, accused No. 2 is arraigned as a accused in this case. To charge accused No. 2 for offence punishable under sections 3, 7, 9 & 10 of the Essential Commodities Act and Sections 7 & 13 of the Public Distribution Scheme (Control Order), 2015, there has to be concrete, certain, material documentary evidence which without any exception proves guilt of accused No. 2 beyond reasonable doubts. But the charge which prosecution want to prove seems to be groundless from perusal of evidence on record. Thus, ratio laid down above is helpful to the accused No. 2.

15. The all material evidence on record i.e. police report and documents filed along-with the charge-sheet, the charge against the

accused No. 2 seems to be groundless. I also find that, there is no prima-facie case has been made out against the accused No. 2 for the offence punishable under sections 3, 7, 9 & 10 of the Essential Commodities Act and Sections 7 & 13 of the Public Distribution Scheme (Control Order), 2015. Thus, as per ratio laid down by the Hon'ble High Court in above referred citation, the charge of sections 3, 7, 9 & 10 of the Essential Commodities Act and Sections 7 & 13 of the Public Distribution Scheme (Control Order), 2015 seems to be groundless. Thus, the accused No. 2 is entitled to be discharged. Upon perusal of the police report and papers alongwith it, it reflect that charge of sections 3, 7, 9 & 10 of the Essential Commodities Act and Sections 7 & 13 of the Public Distribution Scheme (Control Order), 2015 are groundless. Hence, the accused No. 2 is entitled for discharge. Thus, considering the above discussion, I proceed to pass the following order.

### **ORDER**

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|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | The accused No. 2 Rakesh Rajkumar Dhir is discharged from the offence punishable under sections 3, 7, 9 & 10 of the Essential Commodities Act and Sections 7 & 13 of the Public Distribution Scheme (Control Order), 2015 |
| 2. | Bail bonds of the accused No. 2 are cancelled.                                                                                                                                                                            |

Place: Uran.  
Date: 13/02/2023.

(N. M. Wali)  
J.M.F.C., Uran.