

ORDER BELOW EXH. NO. 09 BAIL APPLICATION
(Passed on this 10th day of March 2023)

01. Accused No. 1 to 4 are seeking to release them on regular bail.

02. Accused have averred that, there is now charge-sheet is filed and they have received its copies. They are in custody since dated 03.01.2023 though have not committed any offence. This court has jurisdiction to try all offence level against them. They all are managers of their own families and earning hands and serving at various places. Their families are starving due to their incarceration. Having families they will not abscond and will abide conditions and also ready to furnish surety for their future appearance, so requested to release them on bail.

03. Ld. APP has filed say and objected to release accused on bail. According to him, there is prima facie case against the accused in which it is seeming that, accused have tried to misappropriate gas of public company which is undertaking of Government, so offences within which some are punishable with life imprisonment, so are serious in nature. He has also claimed that, as accused persons are from out of jurisdiction and there are net spread over some States, so in case accused persons have released on bail, then, as investigation is yet not completed, so they will either destroy evidence which is IO could have not collected yet, or persuade witnesses from disclosing material facts. He has also fear that, accused may be habituated in the said crime,

so will repeat it and such releasing will carry wrong message in society though such type of offenders are dangerous to the society, so requested to reject application.

04. Heard Learned Advocate Shri. Kashyap Tarkase for accused persons and Learned APP Shri. S. A. Vyawahare for the prosecution.

05. Bearing in mind submissions of both sides it will be helpful to see law laid down in respect of releasing accused persons on bail. Here profitably law laid down by Honourable Supreme Court can be referred. In the case of **Rajesh Ranjan Yadav v. SBI** reported in **(2007)1 SCC 70** it has held as under:

“10. In our opinion none of the aforesaid decisions can be said to have laid down any absolute and unconditional rule about when bail should be granted by the court and when it should not. It all depends on the facts and circumstances of each case and it cannot be said that, there is any absolute rule that because of a long period of imprisonment has expired bail must necessarily be granted.”

Honourable Supreme Court has settled position of the law in respect of bail in the case of **State of U.P. v. Amarmani Tripathi** reported in **(2005)8 SCC 21** as under:

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) *character, behaviour, means,*

*position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see *Prahlad Singh Bhati v. NCT, Delhi* [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and *Gurcharan Singh v. State (Delhi Admn.)* [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179]].*

While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar v. Rajesh Ranjan* [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] : (SCC pp. 535-36, para 11)

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- (c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v.*

Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and *Puran v. Rambilas* [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)”

Honourable Supreme Court in the case of **Rajesh Ranjan Yadav's case** (*supra*) it has held that, while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society.

06. In the light of aforesaid legal position even though Ld. Counsel shri. Tarkase has very much debated on technicalities of transporting gas cylinders as well as relating to safety measures and appliances used by accused persons, but one thing is clear as submitted by Ld. APP that, accused had used cylinders of various companies instead of one company to which they are claimed to have represented as submitted by shri. Tarkase. In this scenario using various cylinders, appliances and safety measures by accused are sufficiently connects them with crime alleged. In this background submission of shri. Tarkase that, accused are trained persons makes it serious implication, because accused have used their skill for committing crime. It is highly

unreliable thing that, accused were on the Dhaba only to leisure, so had not committed any offence, but Ld. APP has brought to the notice of this court that, there was no any mark of company on any appliances and safety articles, so it cannot be said that, accused were doing anything with gas cylinders with the permission of said company. It is also brought to the notice of the court that, whatever cylinders were used those were of various companies. When accused were employees of or connected with the said public company, then whatever appliances and safety measures used by them were required to be with marks of said company of which they were employees. Hence, in absence of such showing any mark of company on any used appliances, then *prima facie* it can be inferred that, those were used unauthorizedly. Surprise to note here that, accused have not produced any authority to alight at the place offence as authorized point. In this background only because of any official of company has not come forward either to lodge report, or to give statement whatever act done by accused while handling gas otherwise which is flammable substance in a public place such like spot of incident will not be justifiable.

07. As seen from charge-sheet it transpires that, accused were handling flammable gas at unauthorized spot. It is alleged that, they were filling gas from tanker in empty cylinders unauthorizedly. Some were filled whereas some were to be filled at the same time there was raid. In this background there is ample *prima facie* evidence is collected by IO, so submission of shri. Tarkase is not acceptable that,

there is no evidence at all to charge the accused. As laid down in **Ram Govind Upadhyay v. Sudarshan Singh** reported in **(2002)3 SCC 598** *prima facie* satisfaction of the court in support of the charge is sufficient.

08. As seen from the charge-sheet accused have tried to get filled cylinders which were of various companies, so Ld. APP has rightly argued that, those were not for authorized purpose. In this scenario submission of shri. Tarkase that, those cylinders were of Dhaba owner doesn't digest. Accused have shown skill in filling cylinders, so reason to believe that, they should have done such things priorly too, so fear of Ld. APP that, they may repeat crime will come in truth in case they are set at large. As submitted by Ld. APP yet whole investigation is not completed. Technically charge-sheet is filed, but other accused have to arrest and recover some muddemal, so there may require presence of accused for interrogation. Hence, releasing accused would hamper investigation which yet on track.

09. In the aforesaid circumstances only because of charge-sheet is filed accused cannot claim that, there are changing circumstances, so got right to seek bail. This court is required to balance in between personal liberty of accused as well as public interest as observed by Honourable Supreme Court in **Kalyan Chandra Sarkar's** case (*supra*) which will otherwise suffer in case accused have released on bail and they will indulge in such offences again. In this scenario accused are not entitled to release on bail. That is also when

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there is *prima facie* satisfaction of the court that, there is material to call accused to face trial. There is no required to assess whether case is truthful or falsity is there. Hence, application is merit-less, therefore, rejected.

Dated: 10.03.2023

(BHAGWAN D. PANDIT)
Add. Chief Judicial Magisterial,
(3rd Court) Kopargaon,
Dist. Ahmednagar.