



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1072 OF 2022

- 1] **Kashifa Kausar Sayed Sirajoddin**
Age : 51 years, Occu.: Service as
the then Incharge Head Mistress
of Model Urdu Primary School,
Azizpura, Beed, R/o: Shahensha Nagar,
Beed, Taluka and District : Beed.
- 2] **Sayed Rauf Ali s/o Sayed Mazahar Ali**
Age : 53 years, Occu.: Service as Peon
with Model Urdu Primary School at
Azizpura, Beed, R/o: Shahensha
Nagar, Beed, Taluka and District : Beed. ...Petitioners

VERSUS

- 1] **The State Of Maharashtra**
through the Incharge Police Station Officer,
Beed City Police Station, Beed,
Taluka and District : Beed. ...Respondent
- ...

- Mr. Rajendraraa S. Deshmukkh, Senior Advocate, a/w Mrs. M. S. Deshmukh, Advocate i/by Mr. D. R. Deshmukh, Advocate for the Petitioners
 - Mr. AAA Khan, APP for Respondent – State
- ...

CORAM : MEHROZ K. PATHAN, J.

RESERVED ON : 21.01.2026

PRONOUNCED ON : 03.02.2026

ORDER :

1. The petitioners have approached this Court seeking quashing and setting aside of the order dated 27.11.2021 passed by the learned Additional Sessions Judge, Beed, in Criminal Revision Application No. 49 of 2021, thereby rejecting the revision filed against the order dated 15.03.2021 passed by the learned Chief Judicial Magistrate, Beed, in R.C.C. No. 63 of 2019, by which the discharge application preferred by the original accused No. 2 – *Kashifa Kausar Sayed Sirajoddin* and accused No. 3 – *Sayed Rauf Ali* came to be rejected.

2. Heard learned Senior Counsel appearing for the petitioners and learned APP appearing for the State.

3. Learned Senior Counsel for the petitioners submits that the petitioners have been implicated in the present crime solely on the basis of the statement of a co-accused, which is not admissible in law. The crime was initially registered against one accused; however, subsequently, on the basis of the statement of the arrested accused, the present petitioners have been deliberately implicated without there being any independent evidence against them. It is submitted that the charge-sheet would show that no essential commodities were found in the possession of the present petitioners. The auto-rickshaw was found at *Khashbag*, which is far away from the school premises.

Petitioner No.1, who was the In-charge Head Mistress of the school, was attending an official meeting at the Zilla Parishad from 10.00 a.m. to 04.00 p.m., and a certificate of attendance issued by the Education Officer (Primary), Zilla Parishad, confirms her presence at the said meeting. Therefore, the very basis of the allegation that petitioner No.1 had handed over the gunny bag containing rice to the arrested accused is doubtful. It is contended that the charge-sheet itself does not disclose sufficient material to proceed against the petitioners and, therefore, the discharge application ought to have been allowed.

4. It is further submitted that the Revisional Court failed to appreciate that the rice bag was found in the auto-rickshaw of accused No.1 – *Nazim*, and not from the school premises or from the custody of the present petitioners. The allegation that the said bag was handed over to accused No.1 by the petitioners is based solely on his statement. Merely on the basis of such statement, the petitioners cannot be compelled to face trial. The attendance record maintained by the Education Officer (Primary), Zilla Parishad, Beed, clearly shows that petitioner No.1 was present at the meeting on 24.10.2018, and petitioner No.2, being a peon, was also present with her. Therefore, both were not present near the spot from where the alleged seizure was made. It is also pointed out that the seized gunny

bag does not bear the name of the school, the seizure panchnama does not mention the school name, there is no record showing the quantity of rice received by the school, and there are no complaints from students or parents. Hence, it is submitted that the prosecution is false and motivated, and the revision application deserved to be allowed.

5. As against this, learned APP vehemently opposed the petition and submitted that upon receipt of secret information that food grains meant for school children were being illegally transported for sale in the market, a raid was conducted. The auto-rickshaw driven by accused No.1 – *Nazim* was intercepted, and during search, one gunny bag of rice meant for distribution under the Public Distribution Scheme (PDS) was found. The rice was allotted to schools under the Mid-Day Meal Scheme.

6. Learned APP further submits that the Investigating Officer addressed a communication dated 26.10.2018 to the Education Officer, Beed, and in reply it was revealed that the gunny bags are supplied by the Food Corporation of India through authorized agencies to the Modern Urdu Primary School. The tabular details of the rice supplied in October 2018 showed several blank spaces in the register maintained by the school. It is further contended that the plea of alibi and absence of the accused from the spot can be

considered only at the stage of trial and not at the stage of deciding the discharge application. The FIR itself mentions that the present petitioners handed over the gunny bag to the arrested accused, and therefore, sufficient material exists to proceed against them. The application is devoid of substance and therefore liable to be rejected.

7. I have considered the submission advanced by the learned senior counsel as well as the learned APP. With the assistance of learned counsels I have also gone through the record. The perusal of the charge-sheet filed on record by the petitioners herein shows that the applicant Kashifa was working as the headmistress whereas the petitioner No. 2 – Sayyad was working as the peon in the Modern Urdu Primary school at beed. The raid was conducted by the complainant and the police party, upon receiving the secret information that one person was carrying the paddy bags meant for midday meal of the school, through his ricksaw, for selling the same. The vehicle was therefore intercepted by the complainant and by the police party and arrested accused Nazim Shaikh was interrogated. Upon interrogation, the arrested accused Nazim Shaikh informed that the petitioner No. 1 Kashifa (headmistress) and petitioner no. 2 – Sayyad Rauf (peon) has delivered the said gunny bags of rice to the arrested accused for selling the same in the market. The said guuny bags was containg an ISI mark and expression *Swachh Bharat*

manufactured in India was inscribed on the bag. The said gunny bag was therefore seized along with the rickshaw. An offence under Section 3 and 7 of the essential commodities act came to be registered on the complaint filed by the complainant and the accused Nazhim auto ricksaw driver came to be arrested. After completion of the investigation the seizure panchname was drawn and the statement of the police raiding party was recorded. The investigating officer issued communications to the CEO of the ZP and the district supply officer, for carrying out the necessary investigation. In reply to the communications issued by the IO, the Block Education Officer of the Panchayat Samiti Beed has informed that every month 25 50 kg rice is supplied to Modern Urdu School and the said rice is supplied by the Food Corporation of India through specific agencies. The tabular information of the paddy, received by the Modern Urdu Primary School was also obtained and it was found to be doubtful.

8. It is no doubt true that the Education Officer, Zilla Parishad, Beed, has issued a communication dated 09.12.2019 certifying that the petitioner attended the *staff justification meeting* convened by the Education Officer on the date of the incident, i.e. 14.10.2018, from 10.00 a.m. to 04.00 p.m. The said communication also contains the signature of the petitioner at Serial No. 34 in the list of attendees who participated in the meeting held at the *District Scouts and*

Guides Office, Beed. However, the said plea of alibi can very well be raised by the petitioner in defence during the course of trial and cannot be a consideration at the stage of deciding the discharge application.

9. The Hon'ble Supreme Court, in the case of ***State of Gujarat Vs. Dilipsinh Kishorsinh Rao; (2023) 17 SCC 688***, has held as under :-

“12. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression “the record of the case” used in Section 227 CrPC is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.”

Further, in ***Krishnanath v. State (2009 (3) MHLJ 821)***, the Hon'ble Supreme Court has held that at the stage of discharge, an in-depth scrutiny of the material on record is impermissible and the Court is only required to examine whether a prima facie case exists and whether there is sufficient material to proceed against the accused for framing of charge.

10. In view of the aforesaid legal position, the plea of alibi could not have been considered either by the learned Trial Court or by the Revisional Court. The say filed by the prosecution before the learned Trial Court during the bail proceedings, as well as the FIR, clearly indicates that the arrested accused *Nazim* attempted to sell the said

rice in the open market at the instance of the present applicants, namely *Kashifa*, who was working as Head Mistress, and *Sayyad*, who was working as a Peon in the Modern Urdu Primary School. Thus, sufficient material exists at this stage to proceed against the applicants, and the application for discharge was rightly rejected by the learned Trial Court.

11. The Revisional Court has also considered the pleas raised by the petitioners in detail and has rightly concluded that no case for discharge is made out. There is no error apparent on the face of the record, nor is there any material irregularity committed by either of the Courts below. The petition is, therefore, devoid of merit and is accordingly **rejected**.

12. Needless to mention that the observations made herein are prima facie in nature and shall not influence the trial Court while deciding the case on its own merits.

(MEHROZ K. PATHAN, J.)

13. After pronouncement of the order, learned counsel for the petitioners seeks continuation of the interim relief for a period of four weeks, which has been operating in the present petition since 07.09.2022. However, taking into consideration the reasons stated

hereinabove and the fact that there is sufficient material to proceed against the petitioners, I am not inclined to continue the interim relief, which has stayed the trial against the present petitioners.

14. The prayer for continuation of interim relief for a period of four weeks is hereby rejected.

(MEHROZ K. PATHAN, J.)