



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1580 OF 2026

1. Ganesh Marutirao Dhumal,
Age : 34 yrs., Occu. Labourer,
R/o. Upalai Road, Barshi,
Tq. Barshi, Dist. Solapur.
2. Rohan Ravindra Kadam,
Age : 29 yrs., Occu. Labourer,
R/o. Alani, Taluka & Dist. Dharashiv.

...Applicants

Versus

The State of Maharashtra,
Through Police Station Incharge,
Dharashiv City Police Station,
Taluka & Dist. Dharashiv.

...Respondents

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Mr. Abhijit S. More – Advocate for the Applicants
Mr. S. D. Ghayal – Addl. P. P. For Respondent/State
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CORAM : HITEN S. VENEGAVKAR, J.

RESERVED ON : 10th SEPTEMBER, 2026

PRONOUNCED ON : 23rd SEPTEMBER, 2026

ORDER : -

1. By this Application under Section 483 of the Bharatiya
Nagarik Suraksha Sanhita, 2023, the Applicants seek regular bail in
Crime No.319 of 2026 registered with Dharashiv City Police Station,
Dharashiv, for offences punishable under Sections 123, 223, 274 and
275, read with Section 3(5) of the Bharatiya Nyaya Sanhita, 2023
[hereinafter referred to as 'BNS']. Applicant No.1 was apprehended on
13th July, 2026 and Applicant No.2 was arrested in connection with the

same crime. They are stated to be in custody since 13th July 2026. Their Criminal Bail Application No.316 of 2026 was rejected by the learned Additional Sessions Judge, Dharashiv, on 21st July, 2026.

2. The prosecution case, in brief, is that Police Inspector Kumar Darade received secret information on 12th July, 2026 that prohibited gutkha was being transported from the Tuljapur side in a black Scorpio on National Highway No.52. At about 11.45 p.m., the police noticed Scorpio bearing registration No.MH-25-BF-3696 near Palaswadi Phata, Wadgaon Shivar. The driver did not stop on being signalled and the vehicle was intercepted after a chase near Terna Engineering College. Applicant No.1 was driving the vehicle. According to the FIR, the other occupant, alleged to be applicant No.2, left the vehicle and fled in the darkness.

3. A search of the vehicle allegedly resulted in seizure of 40 white bags containing 1,800 packets of Director Special Pan Masala valued at Rs.9,07,200/-, 40 white bags containing 1,800 packets of Shot Luxury Chewing Tobacco valued at Rs.1,29,600/-, and the Scorpio vehicle valued at Rs.15,00,000/-. The aggregate value shown in the FIR is Rs.25,36,800/-. The prosecution alleges that the consignment had been obtained from accused Jafar Jamadar of Aland, Karnataka, at the instance of accused Pavan Jivan Pole and was to be delivered to accused Amol Gunjal near Pargaon toll naka in Dharashiv District.

4. Learned counsel for the applicants submits that their attributed role is confined to transportation. The entire consignment, along with the vehicle, has been seized, and no further recovery remains to be made from either of the applicants. The police no longer require their custodial interrogation. It is further submitted that neither of the applicants has any criminal antecedent. He submits that, apart from Section 123 of the BNS, all the other offences invoked against the applicants are bailable and triable by a Magistrate. Relying on **Anand Ramdhani Chaurasia and another v. State of Maharashtra and others**, 2019 SCC OnLine Bom 1857, **Ganesh Pandurang Jadhao v. State of Maharashtra**, (2016) Cri LJ 2401, and orders granting protection in similar matters, he contends that mere storage or transport, without administration of the substance to any identified person, does not attract the ingredients of Section 123 of the BNS. It is further submitted that accused No.4, the alleged intended recipient, has already been released on bail and the present Applicants, who are labourers, deserve the same relief on parity and on their own role.

5. Learned APP opposes the application. He submits that the quantity, the attempted evasion of the police and the alleged flight of applicant No.2 demonstrate conscious and organised transport. The consignment was allegedly sourced from Karnataka for supply within Maharashtra despite the subsisting prohibition. The supplier and another participant are yet to be arrested, and the investigation into the

source and distribution network is incomplete. According to the State, the words 'causes to be taken' in Section 123 cover every knowing participant in the commercial chain, including a manufacturer, transporter and seller, because each actively moves the harmful product towards eventual consumption. Reliance is placed on **Vasim s/o Jamil Shaikh v. State of Maharashtra, Criminal Application No.4353 of 2016 decided on 29th November 2018**, and the subsequent decisions which have followed that view.

6. The controversy requires care because the corresponding provision, Section 328 of the Indian Penal Code, has received divergent consideration in this Court and the principal appeals are pending before the Supreme Court. This application is for bail. It is neither necessary nor proper to pronounce finally upon the guilt of the applicants, to quash Section 123 from the Crime, or to decide an issue awaiting authoritative determination by the Supreme Court. The question before this Court is narrower: what *prima facie* scrutiny should a bail court undertake when Section 123 is invoked against a person alleged to be a manufacturer, supplier, transporter, warehouse keeper or seller of a prohibited product, and whether continued custody is justified on the material of the particular case.

7. Section 123 BNS substantially carries forward Section 328 IPC. It punishes a person who administers to, or causes to be taken by,

any person any poison or any stupefying, intoxicating or unwholesome drug or other thing with intent to cause hurt, with intent to commit or facilitate an offence, or knowing it to be likely that hurt will thereby be caused. The provision therefore contains an act element, a description of the substance, a causal link with its being taken by a person, and the prescribed intent or knowledge. The expression 'causes to be taken' is wider than physical administration by the accused himself, but it cannot be read in isolation from causation and the mental element expressly enacted by Parliament.

8. In **Joseph Kurian alias Jose v. State of Kerala, (1994) 6 SCC 535**, the Supreme Court held that the prosecution must establish that the substance answers the statutory description, that the accused administered it or caused the victim to take it, and that the act was accompanied by the required intent or knowledge. The Court explained that the act may be accomplished directly or through another, but the responsibility of the accused and the necessary *mens rea* must be proved by reliable and cogent evidence. That exposition of the ingredients binds this Court. Its application to a prohibited commercial product seized before consumption, and to the several actors in a supply chain, is the question on which this Court has expressed different views.

9. In **State of Maharashtra v. Sayyed Hassan Sayyed Subhan and others, AIR 2018 SC 5348**, the Supreme Court rejected the

proposition that the Food Safety and Standards Act, 2006 excludes prosecution under the Penal Code. The same facts may constitute offences under both enactments if the ingredients of each are satisfied, subject to the rule against double punishment. The Supreme Court, however, remitted for fresh consideration, the distinct issue whether Sections 188, 272, 273 and 328 IPC were in fact made out. Sayyed Hassan therefore answers the question of coexistence of the enactments; it does not dispense with proof of the ingredients of Section 328.

10. In **Anand Ramdhani Chaurasia** (supra), a Division Bench held that mere storage, without an act bridging storage and consumption, did not amount to administering or causing a person to take the product. The Division Bench regarded the earlier view in Vasim Shaikh as rendered without considering Joseph Kurian. Operation of the judgment in **Anand Ramdhani Chaurasia** was stayed by the Supreme Court on 31st August 2020 in SLP (Crl.) No.4101 of 2020 arising from Diary No.8224 of 2020. The later decision in Ganesh Pandurang Jadhao on remand was also stayed on 7th January 2021 and tagged with that matter. A stay of operation is not an affirmance of the contrary proposition and does not itself declare law under Article 141; equally, a bail court cannot proceed as if the stayed operative relief conclusively governs the case before it.

11. In later bail decisions of this Court, including **Nagesh**

Rajshekhhar Mense v. State of Maharashtra, decided on 3rd January 2023 in Anticipatory Bail Application No. 799 of 2022 and connected matters, the Court has treated the manufacture, movement, storage and sale of prohibited products as potentially forming a chain of indirect causation and has declined anticipatory protection where investigation was at an initial stage. On the other hand, the Supreme Court has granted interim protection in several matters involving the same controversy. In **Altaf Gulab Shaikh v. State of Maharashtra**, SLP (Crl.) No.8379 of 2023, by order dated 21st July 2023, the Supreme Court recorded that SLP (Crl.) No.4101 of 2020 was pending, tagged the matter with it, and directed that no coercive step be taken subject to cooperation with the investigation. Such interim orders do not finally decide statutory interpretation. They show why neither arrest nor refusal of bail can follow mechanically from the addition of Section 328 IPC or Section 123 BNS.

12. The following approach preserves both effective investigation and personal liberty until the issue is finally settled. At the bail stage, the Court need not decide as an abstract proposition that every participant in a prohibited supply chain is covered by Section 123 or that every participant is outside it. The Court must examine whether the FIR and the material then collected disclose reasonable grounds, specific to the accused, for the act element, the causal nexus and the prescribed intent or knowledge. The commercial label attached to an

accused - manufacturer, transporter, stockist or seller - is relevant to role, but is neither a substitute for proof nor a statutory presumption.

13. In the case of a manufacturer, financier, organiser, wholesaler or seller, material showing ownership of the goods, repeated dealings, orders, invoices, accounts, communications, concealment, payment, control over destination or an established distribution arrangement may furnish a stronger *prima facie* inference of conscious and purposeful participation. A retail sale or an offer for sale may place the accused closer to eventual consumption, but the Court must still examine the statutory ingredients rather than infer them merely from the product's prohibited character.

14. In the case of a transporter, driver, cleaner or hired labourer, physical carriage may establish custody of the goods but does not by itself answer whether the person knew the nature of the consignment and purposefully participated in its prohibited movement. Knowledge and participation may legitimately be inferred from the manner of concealment, the quantity, the route, evasion, communications, instructions, payment, ownership or control of the vehicle, prior or repeated transactions, and conduct at interception. The inference must arise from facts attributed to that individual. The Court cannot presume the same degree of control and *mens rea* against a daily-wage driver as against the owner or organiser merely because both

appear at different points in the movement of the goods.

15. These observations do not create immunity for a transporter or a seller. Nor do they hold that an identified consumer or completed consumption must invariably be shown before an investigation under Section 123 can proceed. They require only the ordinary discipline of criminal law: an offence carrying imprisonment up to ten years must be supported, even at the *prima facie* stage, by material bearing on its constituent acts and mental element. The deleterious effect of gutkha and chewing tobacco and the legitimacy of measures protecting public health cannot be doubted. Public-health gravity is a relevant circumstance, but it cannot replace the statutory ingredients or create an unlegislated embargo on bail.

16. The second and separate inquiry is the necessity of custody. Even where the accusation under Section 123 is reasonably arguable, that section contains no special restriction comparable to a statutory twin-condition regime. The Court therefore applies the settled considerations governing bail: the nature and gravity of the accusation, the *prima facie* material, the role of the accused, the likelihood of absconding or repeating the offence, the possibility of influencing witnesses or obstructing investigation, the need for custodial interrogation or recovery, the antecedents of the accused, and the ability of conditions to secure the process. A possible sentence of ten years is

relevant, but it is not a legal bar to release.

17. The fact that a principal supplier, manufacturer or intended recipient has not yet been arrested cannot, without more, justify indefinite detention of an accused already interrogated. The investigating agency must be able to indicate what material remains to be recovered or confronted, how the applicant can frustrate that step, and why attendance and non-contact conditions would be inadequate. Similarly, parity is role-sensitive. Bail granted to a co-accused is relevant only after comparing the allegations, material, antecedents and investigative necessity relating to each person.

18. Applying these principles, there is material at this stage to infer that the applicants were not in accidental proximity to an innocuous consignment. The volume of the goods, the alleged failure of Applicant No.1 to stop the Scorpio when signalled, and the alleged flight of Applicant No.2 are circumstances from which conscious knowledge of the prohibited cargo may *prima facie* be inferred. The Court therefore does not accept the broad submission that Section 123 must be excluded from consideration at the threshold. The prosecution is entitled to investigate the origin, ownership, intended delivery and financial trail of the consignment.

19. That conclusion, however, does not decide the need for

further incarceration. The entire consignment and the vehicle were seized on 13th July 2026. Applicant No.1 was remanded to magisterial custody on 14th July 2026. The Sessions Court records the Investigating Officer's statement that police custody was not required. The FIR itself names the alleged source, the person at whose instance the goods were carried, and the proposed recipient. Nothing placed before this Court indicates any further recovery to be made from the applicants, any identified witness whom they have attempted to influence, or any communication, account, payment, ownership interest or earlier transaction connecting either applicant with manufacture, financing, stocking or sale. Their presently attributed role is transportation.

20. Both Applicants are stated to have no criminal antecedents. Accused No.4, the alleged recipient of the consignment, has been granted bail. That order does not compel release on parity, but it is relevant while assessing whether the continued custody of the alleged carriers is indispensable. The fact that two other accused have not been arrested is a legitimate investigative concern; on the material presently shown, it can be addressed by stringent attendance and non-contact conditions. The alleged flight of Applicant No.2 also calls for a stricter condition securing his presence, but, after his arrest and the seizure of the entire property, it does not by itself require continued detention.

21. The learned Sessions Judge proceeded on the footing that

there was a 'bar' to bail because Section 123 is serious, non-bailable and punishable up to ten years. There is no such statutory bar. The order also treated the mere naming of the Applicants in the FIR and general apprehensions of absconding, repetition and tampering as sufficient, even after noting that police custody was not required. The exercise required an assessment of the Applicants' individual role, the material bearing on the ingredients, and the concrete need for custody. On that assessment, further pre-trial detention would be disproportionate to the investigative purpose presently disclosed.

22. The Application therefore deserves to be allowed, subject to conditions that protect the investigation and the trial. The observations in this order are confined to the decision on bail. They shall not influence the investigation, consideration of the police report, framing of charge, trial, or the final determination of the scope of Section 123 BNS by a competent court.

ORDER

- (i) Bail Application No.1580 of 2026 is allowed.
- (ii) Applicant No. 1, Ganesh Marutirao Dhumal, and Applicant No. 2, Rohan Ravindra Kadam, shall be released on bail in connection with Crime No. 319 of 2026 registered with Dharashiv City Police Station, Dharashiv, for the offences punishable under Sections 123, 223, 274 and 275, read with Section 3(5) of the Bharatiya Nyaya Sanhita, 2023, upon each of them executing a personal recognizance bond

in the sum of Rs. 50,000/- (Rupees Fifty Thousand only), with one or two solvent sureties in the like amount.

- (iii) The Applicants shall attend Dharashiv City Police Station, Dharashiv, every Monday between 10.00 a.m. and 12.00 noon for six weeks, and thereafter as and when called by the Investigating Officer on written notice.
- (iv) The Applicants shall furnish their current residential addresses and mobile telephone numbers to the Investigating Officer and the Trial Court and shall intimate any change therein in writing within forty-eight hours.
- (v) The Applicants shall not directly or indirectly contact, threaten, induce or influence any prosecution witness or any accused who is yet to be arrested, and shall not obstruct the investigation in any manner.
- (vi) During the pendency of the case, the Applicants shall not engage in the manufacture, procurement, storage, transport, distribution or sale of any gutkha, pan masala, flavoured or scented tobacco, or other product prohibited by a lawful order in force in Maharashtra.
- (vii) The Applicants shall not leave India without the prior permission of the Trial Court. They shall deposit their passports, if any, with the Trial Court within seven [7] days of their release. If the Applicants do not possess passports, they shall file an affidavit to that effect.
- (viii) The Applicants shall remain present before the Trial Court on every date unless their attendance is specifically exempted, and shall not seek avoidable adjournments.

- (ix) Breach of any of the aforesaid conditions shall entitle the prosecution to seek cancellation of bail in accordance with law.
- (x) All above observations are *prima facie* in nature and confined to the adjudication of the present bail application only.

[HITEN S. VENEGAVKAR]
JUDGE

SG Punde