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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.251 OF 2015

Wasim Ahmed Hakimuddin Shaik and Anr. ... Applicants
V/s.
The State of Maharashtra ... Respondent

Mr.Matim Shaikh, for the Applicants.
Ms.A.T.Javeri, APP for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.
DATED : 19th MARCH, 2015.

PC.

1. Heard learned counsel for the Applicants and the learned APP for the Respondent - State.
2. By this application, the applicants seek pre-arrest bail in connection with C.R. no.I-245 of 2014, registered with the Kashimira Police Station, Thane, for the alleged offences punishable under Sections 328, 272, 273, 188, 179 of the Indian Penal Code r/w Section 26(2)(1), 27(3) of Food Security Act, 2, 3, 4, FSS Restriction Act.
3. The incident in question has taken place on 21st July, 2014.

Pursuant to secret information received by the officials of the Food & Drugs Administration, a trap was laid and a tempo carrying the prohibited contraband 'gutka' came to be intercepted. The said tempo was coming from Gujarat. The driver of the said tempo was apprehended on the spot and 'gutka' worth Rs.3,66,845/- were seized. Accordingly, an FIR was lodged as against the tempo driver and other unknown persons. During investigation, it was allegedly revealed that the applicants were dealing in the sale of tobacco articles.

4. Learned Counsel for the Applicants contended that Section 328 of the Indian Penal Code has no application in the facts of the present case and that the other sections which have been charged are bailable. He further contended that there is no material to connect the applicants with the seized contraband. Learned APP is unable to show the complicity of the applicants with the seized contraband.

5. Prima-facie, there is no material to connect the applicants with the seized contraband ; and even the applicability of Section 328 of the Indian Penal Code is doubtful in the present case. The other sections which have been charged are bailable. In the facts, the applicants deserve to be

granted pre-arrest bail on the following terms and conditions :

ORDER

- i) In the event of the arrest, the Applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount ;
 - ii) The Applicants shall not tamper or attempt to influence any person concerned with the case ;
 - iii) The Applicants shall co-operate in the conduct of the trial.
6. The Application is allowed and disposed of in above terms.
7. The aforesaid observations are prima-facie, and the Trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.
8. Parties to act upon the authenticated copy of this order.

(REVATI MOHITE DERE, J.)