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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1513 OF 2014

Mohammed Shabir Khana	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

Mr.A.A.Siddiquie, for the Applicant.

Ms.P.P.Shinde, APP for the State.

PSI - Prakash K. Howal, Mankhurd Police Station, Mumbai.

CORAM : REVATI MOHITE DERE, J.

DATED : 17th FEBRUARY, 2015.

PC.

1. Heard learned counsel for the Applicant and learned APP for the Respondent - State.

2. By this application, the applicant seeks pre-arrest bail in connection with C.R. no.253 of 2014 registered with the Mankhurd Police Station, Mumbai for the alleged offences punishable under Sections 188, 272, 273, 328, 511 r/w 34 of the Indian Penal Code and 26(2)(i) of Food Safety and Standard Act r/w 3(1)(zz)(i) with Section 59 along with Section 30(2)(a) along with Section 27(3)(d) and (e) r/w Commissioner of Food,

Safety and Security Notification dated 15th September, 2014, Sections 58 and 59(3).

3. According to the prosecution, the complainant – Kishore Atmaram Salunke, who was working in the Food Safety and Drugs Department, received information that there is a stock of banned gutkha and tobacco kept in the godown of the applicant at Samarth Wadi, Mandala Galli, in front of Maykka Mandir, Ghatkopar Link Road, Mankhurd, Mumbai. Accordingly on the basis of the said information, which was received on 23rd September, 2014, the complainant along with the panchas raided the godown. In the raid they found two accused persons namely viz., Lakhan and Guddu in the said godown and on search found 1000 Goa Pan Masala 600 packets, 100 Goa Zarda Tobacco 600 packets, Vimal Pan Masala 1200 packets, Vimal 1, 1200 packets and Laxmi Gutka 400 packets. The total value of the seized banned articles was 3,44,000/- The said items were seized by the complainant under the panchanama. It is alleged that the two accused disclosed the name of the applicant, as being the owner of the godown for whom they were working. On the basis of the said information, FIR was registered with the Mankhurd Police Station by the complainant as against the applicant and two other accused. The two

accused Lakhan and Guddu were arrested and subsequently released on bail.

4. Learned Counsel appearing on behalf of the applicant states that he is neither the owner of the premises nor had any concern with the premises. However, learned APP appearing on behalf of the State submits that the applicant though not the owner of the premises, had taken the godown on rent and was using the same.

5. Learned Counsel for the applicant contended that all the sections with which the applicant is charged except Section 328 of the Indian Penal Code are bailable sections. He submitted that section 328 of the Indian Penal Code has no application in the facts of the present case.

6. The applicability of Section 328 of the Indian Penal Code is debatable. Without going into the submission, with regard to the applicability of Section 328 of the Indian Penal Code to the facts of the present case, it appears that even otherwise, there is nothing on record in the form of documentary evidence to show that the applicant had taken the godown on rent except the statement of the owner.

7. Considering the aforesaid, the applicant deserves to be granted pre-arrest bail on the following terms and conditions :

ORDER

- i) In the event of the arrest, the Applicant be enlarged on bail on furnishing PR. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount ;
 - ii) The Applicant shall attend the Mankhurd Police Station, Mumbai, once a week i.e. on Saturday, between 10.00 a.m. to 12.00 noon, till the filing of the charge sheet ;
 - iii) The Applicant shall not tamper or attempt to influence the complainant or any persons concerned with the case ;
 - iv) The Applicant shall co-operate with the Investigating Agency.
8. The Application is allowed and disposed of in above terms.
9. Parties to act upon the authenticated copy of this order.

(REVATI MOHITE DERE, J.)