

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

901 CRIMINAL APPLICATION NO. 4649 OF 2016

**SHAIKH FIROZLALA SHAIKH
CHUNNUMIYAN TAMBOLI**

VERSUS

THE STATE OF MAHARASHTRA

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Mr. S.J.Salunke, Advocate for Applicant.

Mr. S.J.Salgare, A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 1st SEPTEMBER, 2016

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PER COURT :

1. The applicant/accused in Crime No. 176/2016 registered at Badnapur police station, Dist. Jalna for the offences punishable u/ss 328,188,272,273,420,120-B of the Indian Penal Code, u/s 59 (ii) of Food Safety and Standards Act, 2006 and u/ss 51,63 and 64 of the Copyright Act, 1957 at the instance of Pradnya Pramod Surse, Food Safety Officer, by this application is praying for releasing him on bail.

2. Heard learned counsel for the applicant. By relying on the **Judgment of the Division Bench of this Court.**

in the matter of Ganesh Pandurang Jadhao Vs. The State of Maharashtra reported in 2016 (1) B.Cr. C – 556 and orders passed by this Court on 24/12/2014 in Anticipatory Bail Application No. 1277 of 2014 along with connected matters in the case of Raju Laxman Pachhapure Vs. State of Maharashtra and on 11/03/2014 in Criminal Application No. 18 of 2014 in the case of Sayyed Chand s/o Sayyed Gafoor Vs. The State of Maharashtra, learned counsel argued that applicability of Section 328 of the Indian Penal Code in the matter of manufacturing and possessing Gutka and Pan masala is seriously in doubt. He argued that in all these matters, this Court has held that manufacturing and possessing Gutka and Pan masala would not amount to administering poison. Learned counsel further argued that necessary investigation *qua* the present applicant is already over and, therefore, his further pre-trial detention is not warranted.

3. Learned A.P.P. opposed the application by contending that there are statements of witnesses, which show that the applicant along with co-accused is owner of seized material as well as machines for manufacturing Gutka. He further argued that report of Chemical Analyst of seized articles shows that the same is unsafe for human consumption.

4. Perused papers of investigation. On raid to the premises of Surya Resort by the Food Safety Officer on 29/07/2016, 2 Gutka making machines as well as huge quantity of Gutka was found in the room of Surya Resort as

well as Rajesh Auto Services at village Dawalwadi, Jalna. The machines and material worth Rs. 1,04,20,000/- came to be seized. During investigation, according to the prosecution case, it is revealed that the applicant and the co-accused are owners of the machines and the material used for manufacture of Gutka. Accordingly, the crime is registered and the applicant came to be arrested.

5. It is seen that by order dated 15/07/2016, Food and Safety Commissioner, State of Maharashtra exercised his powers u/s 30 of the Food Safety and Standards Act and banned manufacture, storage, distribution and sale of Flavoured/Scented Tobacco and additives. According to the prosecution case, the applicant and co-accused were manufacturing this banned product.

6. Considering the above facts, applicability of the provision of Section 328 of the Indian Penal Code to the case in hand is seriously doubtful as held by the Division Bench of this Court in the Judgment in the case of Ganesh Pandurang Jadhao [supra] and as the major investigation *qua* the present applicant is already over, his further pre-trial detention is not warranted. Hence, the following order.

(i) The application is allowed.

(ii) Applicant Shaikh Firozlala Shaikh Chunnumiyan Tamboli in Crime No. 176/2016 registered at Badnapur police station, Dist. Jalna for the offences

punishable u/ss 328,188,272,273,420,120-B of the Indian Penal Code, u/s 59 (ii) of Food Safety and Standards Act, 2006 and u/ss 51,63 and 64 of the Copyright Act, 1957 be released on bail on executing P.R. Bond of Rs. 50,000/- [Rupees Fifty Thousand] and on furnishing surety in the like amount.

(iii) As a condition of this Order, the applicant should not enter in the Jalna district till the completion of investigation and filing of the charge sheet, if any.

(iv) The applicant shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

(v) The applicant shall not tamper the evidence of the prosecution.

[A.M.BADAR, J.]