

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 336 OF 2016**

Ashfaque Ahmed S/o. Waseem Ahmed	...Applicant
Versus	
State of Maharashtra	...Respondent

Mr. Tushar N. Sonawane for the Applicant

Ms. R. M. Gadhavi, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 29TH MARCH, 2016

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P.
2. By this application, the applicant seeks pre-arrest bail in connection with C.R. No. 5 of 2016 registered with the City Police Station, Malegaon, for the alleged offence punishable under Section 328 of the Indian Penal Code and under Sections 26(2)(1)(4) r/w 3(i)(zz)(v) of the Food Safety and Standard Act, 2006.
3. On 24th January, 2016, the police seized contraband material of 339 pouches of paanmasala and tobacco from the co-accused/accused No. 1

from his Paan shop. During investigation, it was revealed that the applicant had supplied the said material to accused No. 1.

4. Learned Counsel for the applicant submitted that the name of the applicant is not disclosed in the FIR and was subsequently added only on the basis of the statement and disclosure made by the accused No. 1. Learned Counsel for the applicant submitted that the entire contraband material has been seized. According to him, even otherwise, no offence as alleged under Section 328 of the Indian Penal Code is disclosed *qua* the applicant, inasmuch as, the applicant has neither administered nor caused any person to take the contraband goods. He relied on the Division Bench Judgment of this Court, Bench at Aurangabad in a group of matters, leading petition being Criminal Writ Petition No. 1027 of 2015 dated 4th March, 2016. Learned A.P.P submits that there are two antecedents *qua* the applicant.

5. Perused the papers. Admittedly, the applicant was not present at the spot at the time when the contraband was seized. The only allegation is that he supplied the said contraband to original accused No. 1. *Prima*

facie, it is doubtful whether an offence under Section 328 of the Indian Penal Code is disclosed in the facts of the present case.

6. Accordingly, the application is allowed and the applicant is granted anticipatory bail on the following terms and conditions :

ORDER

(i) In the event of the arrest, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 10,000/- with one or two sureties in the like amount;

(ii) The applicant shall report to the Investigating Officer on every Saturday from 10:00 a.m to 11:00 a.m for a period of two months;

(iii) The applicant shall not tamper, attempt to influence or contact the complainant, witnesses or any person concerned with the case.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the observations made herein are *prima facie* and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.
9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.