

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1995 OF 2016

Dilip Sitaram Kale. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. D. D. Rananaware, advocate for Applicant.

Mr. Prashant Jadhav, APP for State.

Mr. Pravin Chandrakant Shelar, Inspector, Excise Department, Flying Squad.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : NOVEMBER 21, 2016**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No. 236/16 registered at the police station of excise

department for offence punishable under section 65(e) and 108 of Maharashtra Prohibition Act.

3 It is the case of the prosecution that on the basis of some information the flying squad had raided the premises in Guru Krupa building and had found foreign liquor worth Rs. 1,34,981/-, which is transported from the State of Goa. The first informant was initially alleged against Pratik, who happens to be the son of the present applicant, who was arrested on 21/9/2016 and was enlarged on bail 26/9/2016. In the course of investigation, it had transpired that the flat stands in the name of the present applicant.

4 The learned Counsel for the applicant submits that no case for custodial interrogation is made out. It is also submitted that in the remand report of Pratik, investigating agency has not given ground for custodial interrogation of the present applicant.

5 It is pertinent to note at this stage that it is the contention of the present applicant that the business is run by the son of the applicant Pratik and he has no concern with the same. On the other hand, it is simultaneously submitted that the applicant has executed nokarnama in favour of his son Pratik and the same is submitted before the Excise Department and according to the learned Counsel, the said Nokernama has been validated. It is apparent on the face of the record that the applicant who is being prosecuted under the provisions of the Maharashtra Prohibition Act, is in fact misleading the Excise Department and the father and son have fabricated the documents and presented the same before excise department.

6 It is a matter of record that the stock of liquor was found in the flat owned by the present applicant. It is a vacant flat and it prima facie appears that the said flat is being used for stocking illicit liquor which has been purchased by evading taxes. It is in this circumstance, the applicant does not deserve the discretionary relief under section 438 of the Code of Criminal Procedure, 1973. The application being

sans merits stands rejected.

7 In the eventuality that the applicant appears before the learned Magistrate, the learned Magistrate shall not be influenced by the observations made hereinabove.

8 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)