

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

ANTICIPATORY BAIL APPLICATION NO.1207 OF 2019

Arinjay Duryodhan Patil

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr.Prashant Pawar, Advocate for Applicant.
- Mr.Deepak Thakare, PP a/w Mr.S.H. Yadav, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 06th JUNE, 2019

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.177/19 registered with Vadgon Police Station, Kolhapur, under sections 328, 468, 471, 420, 272, 273, 188, 34 of the Indian Penal Code and under sections 63, 67, 68 of the Copy Right Act r/w 16, 24 of the Food Safety and Safety Standards Act, 2006.
2. The FIR is lodged on 03/04/2019, by Constable Premnath Bajirao Chavan. He has mentioned in his FIR that at

around 06.00 p.m. they received a secrete information that the prohibited articles like Gutka and other articles were being prepared in the house of the Applicant. The police party went to the house of the Applicant. The Applicant was not present though his son was present. The raiding party found a large quantity of banned articles in the nature of tobacco, Gutka etc. The articles and the goods were seized and the FIR was lodged as mentioned earlier.

3. I have heard learned Counsel Mr.Prashant Pawar for the Applicant and learned PP for the State.
4. Learned Counsel for the Applicant submits that section 328 of IPC is not applicable. He further submitted that provisions of Copy Right Act are also not applicable. He further submitted that the Applicant was not present in the house and therefore he cannot be connected with the activities as alleged.
5. Insofar as the contention that section 328 of IPC is not attracted, is concerned; it is concluded by the judgment of

Division Bench of this Court delivered by the Bench at Aurangabad on 29/11/2018 in Criminal Application No.4353/16 in the case of Vasim Jamil Shaikh Vs. State of Maharashtra & Anr. The relevant portion of this judgment reads as under;

“9. In **Writ Petition No. 830/2016 (Umraosing Julalsingh Patil Vs. The State of Maharashtra and Ors.)** decided on 10.1.2017 at this seat though by Single Judge, the possibility of use of provision of section 328 of IPC was considered by this Court in relation to the similar substance. This Court had considered the notification of the State Government dated 15.7.2014 and the provisions of the Act. In that case, the Single Judge had held that these substances contain nicotine and magnesium carbonate and they can take life. This Court had considered the ingredients of provision of section 328 of IPC like

- (i) causes to be taken by any person unwholesome drug and

- (ii) knowing it to be likely that he will thereby cause hurt.

Thus, if these two ingredients are made out, then the prosecution for offences punishable under section 328 of IPC is also possible. In present two matters, huge quantity of tobacco and Pan Masala is recovered and only inference from the circumstance like the food article was in huge quantity is that the applicants wanted to make money by selling it in this State as there was ban for manufacture, possession and sale of these articles. When there is such ban, the persons like applicants are making more money as the persons who are addicted to these substances are ready to pay any price. In recently decided case **Criminal Application No. 4968/2016 (Zahir Ibrahim Panja and Ors. Vs. The State of Maharashtra and Anr.)** decided with other case on 16.10.2018, this Court has again considered the applicability of provisions of sections 273 and 328 of IPC and also the provisions of the Act when such articles are found in possession in Maharashtra. The relevant portion of the observations are at paragraph Nos. 3, 4 and 5 and they are as under :-

“3. The learned counsel for applicants in both the proceedings made following submissions :-

(i) When there are the provisions to cover such offences in Food Safety and Standards Act 2006 and Rules framed thereunder, police ought not to have register the crime.

(ii) The offences punishable under sections 328, 272, 273 of IPC are not made out due to allegations and so, police ought not to have taken cognizance. However, it is admitted that there was the order issued by the Government and the provision of section 188 of IPC could have been used.

(iii) The provisions of aforesaid Special Enactment with regard to sending copy of report to Commissioner etc. were not strictly followed, so J.M.F.C. ought not to have entertained the complaint.

4. Recently in **Criminal Application No. 1195/2018 [The State of Maharashtra and others Vs.**

Sayyed Hasan and others]
decided on 20.09.2018, the Apex Court has considered the various provisions of Special Enactment, the provisions of Indian Penal Code and also the provision of section 26 of General Clauses Act and the Apex Court has laid down that in aforesaid Special Enactment, there is no specific bar to register the crime under the provisions of IPC even if the provisions of Special Enactment are attracted due to the offences committed. In view of these circumstances, this Court holds that there is no force in the contention that the crime ought not to have been registered. Second contention made against use of provisions of sections 272 and 273 of IPC is also not having any force. The provision of section 272 covers the persons who are responsible for adulteration of any food article, to make such article noxious as found and which is intended for sale. The provision of section 273 of IPC covers the seller and also the person who is exposing the articles for sale and those articles are noxious or in the state unfit for

consumption as food. Both provisions can be used against the present applicants as huge quantity of prohibited food articles was found in their possession. There is copy of order issued by the Government in that regard dated 15.7.2016.

5. The contention that the provision of section 328 of IPC cannot be used in the present case also is not acceptable. This provision shows that whoever administers to or causes to be taken by any person anything which is likely to cause hurt then he can be punished under provision of section 328 of IPC. Specific person to whom the thing is administered or the specific incident in which it was caused to be taken need not be mentioned in the case like present one. The persons who are indulging in to illegal activity like possessing and selling the substances which are likely to cause hurt are covered by the provision of section 328 of IPC. This point was dealt with by this Court in Criminal Application No. 560/2013 [Manik More Vs. State and others). How these substances are

injuries to health is considered by this Court while deciding in **Writ Petition No. 3398 of 2011 [Sanket Food Products Private Limited Vs. Union of Indian and others]** decided in the year 2011 itself. Further, the aforesaid order dated 15.7.2016 of the State Government shows that for issuing that order of prohibition, the State Government considered the research material of Tata Memorial Hospital, Tata Institute of Fundamental Research, research work done by James E. Harner and many other institutes from India and abroad. Scientifically, it is established that areca nut chewing has been classified as carcinogenic to humans. Tobacco and such food, substance like Pan Masala and Gutkha which contain the substances cause cardiac arrest, oral cancer, esophageal cancer, stomach cancer and other diseases. They cause diseases of various internal organs and glands also. The study revealed that in India in the year 2011, the amount has been spent on treatment in respect of such diseases for persons of age group 35 to 69 was Rs.1,04,500/-

Crore. The States like Maharashtra, West Bengal, Uttar Pradesh and Andhra Pradesh together contributed 60% of the diseases born from tobacco attributable C.V.D. as the study strongly recommends prohibition of manufacture, sell of tobacco products and in view of the aforesaid substances the order was issued by the State Government. These circumstances need to be kept in mind while considering the grounds raised by the persons like present applicants.”

7. Hence section 328 of IPC is clearly attracted. There is no explanation as to how such banned articles for preparation and manufacturing of Gutka were found in Applicant's house. No explanation is coming forth from the Applicant. Considering all these aspects and considering the seriousness of the offence, custodial interrogation of the Applicant is necessary. There is no merit in the application and hence the application is dismissed.

(SARANG V. KOTWAL, J.)