

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Criminal Application (BA) No. 528 of 2019
Kamlesh Goyal and Anr. Vs. State Through P.S. Civil Lines, Akola City

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.A. Mohta, Advocate for applicants
Mr. M.J. Khan, APP for non-applicant.

CORAM : MANISH PITALE, J.

DATED : JULY 11, 2019

The applicants herein have approached this Court for grant of bail apprehending arrest in connection with FIR dated 06/06/2019 for the offences under Sections 188, 272, 273, 328 R/w 34 of the Indian Penal Code and Section 32 and Section 59 of the Food Safety and Standard Act, 2006.

2. As per the FIR, the allegation against the applicants is that they were transporting huge quantity of *Panmasala* in the State of Maharashtra, which is a banned substance. The allegation is that they had picked up contraband material from M.P. and that it was being taken to Khamgaon in Maharashtra. The material seized from the truck being driven by one of the applicants was found to be worth about Rs.25,00,000/-.

3. The learned counsel for the applicants has submitted that even prima facie no offence under

Section 328 of the Indian Penal Code can be said to have been made out against the applicants because the ingredients of the said offence are not found in the FIR registered against them. In this context, reliance is placed on the Judgment of the Hon'ble Supreme Court in the case of **Joseph Kurian Philip Jose Vs. State of Kerla (1994) 6 Supreme Court Cases 535**, particularly Section 10 thereof and order dated 04/12/2013, passed by this Court similar facts in **Criminal Application (BA) No. 796 of 2013, Shri Nutan Vs. State of Maharashtra**, wherein bail was granted by this Court to the applicants. It is contended that, at worst, allegations in the FIR may lead to registration of offences for violation of directions of the State Government and orders passed under the Food Safety and Standard Act, 2006 and that offence under Section 328 of the Indian Penal Code was certainly not made out. On this basis, the learned counsel for the applicants submitted that the present application deserves to be allowed.

4. On the other hand, the learned APP appearing on behalf of the non-applicant State submitted that a proper reading of Section 328 of the IPC, would show that persons like the applicant herein, who had facilitated commission of offence of causing of hurt by means of poison, etc. were also covered under the said Section 328 of IPC. It is further submitted that the contraband material was worth

about Rs.25,00,000/-, thereby showing the extent of damage that the acts of the applicants were likely to cause in the present case.

5. Heard learned counsel for rival parties and perused the material on record. A perusal of Judgment of the Hon'ble Supreme Court in the case of **Joseph Kurian Philip Jose Vs. State of Kerla** (supra) shows that in paragraph 10, the Hon'ble Supreme Court has specifically held that for a person to be held liable under Section 328 of the IPC, it is essential for the prosecution to prove that the accused is directly responsible for administering poison, etc. or causing it to be taken by any person through another. The said judgment appears to indicate direct involvement of the accused in administering poisonous substance to the victim, resulting in hurt. Following the said Judgment of the Hon'ble Supreme Court, while granting bail to the accused in a similarly situated cases, this Court in its order in the case of **Shri Nutan Vs. State of Maharashtra** (supra) specifically held that the material on record demonstrated violation of the provisions of the Food Safety and Standard Act, 2006 and appeared to fall short of attracting Section 328 of the Indian Penal Code.

6. The facts in the present case as they emerge from the material on record indicate that the role of the applicants as driver and cleaner of the truck was

that of transporting contraband material from M.P. into the State of Maharashtra. At this stage, prima facie, it appears that such an act would violate specific ban order issued by the State of Maharashtra and such other orders there were issued under the said Act.

7. In view of the above, this Court is of the opinion that the applicants have made out prima facie for granting bail, particularly when the applicants have been behind bars since 06/06/2019, on the following conditions.

- a) The applicants shall furnish PR bond of Rs.50,000/- each and surety in the like amount.
- b) The applicants shall attend Police Station Civil Lines, Akola City twice a month i.e. on 2nd and 4th Saturday of each month between 10:00 AM to 5:00 PM, till filing of charge-sheet.
- c) The applicants shall attend the proceedings before the Trial Court.
- d) The applicants shall co-operate with the investigation.
- e) They shall not tamper with the evidence or influence the witnesses.

Application is allowed in above terms.

Hamdast is granted.

JUDGE