

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

Criminal Application (BA) No. 626 of 2019

Irfan Khan and Another

Vs.

State through P.S. MIDC, Akola

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. N.R. Rode, APP for non-applicant.

CORAM : MANISH PITALE, J.

DATED : JULY 18, 2019

The applicants herein have approached this Court for grant of bail as they stood arrested on 25/06/2019, in connection with FIR registered on the same day for offences under Sections 188, 272, 273, 328 R/w 34 of the Indian Penal Code and various provisions of the Food Safety and Standard Act, 2006.

2. The allegation against the applicants is that when a vehicle in which they were travelling was intercepted, *Panmasala* and chewing tobacco worth Rs.4,53,400/- was recovered and that since such material is banned in the State of Maharashtra, they committed the aforesaid offences.

3. It is contended on behalf of the applicants that even if the allegation against the applicants is to be taken on face value, at this stage, it would be

difficult to accept that the applicants had indeed committed offence under Section 328 of the Indian Penal Code and in this regard the learned counsel for the applicant has placed reliance in the case of **Joseph Kurian Philip Jose Vs. State of Kerla (1994) 6 Supreme Court Cases 535**. On this basis, it is contended that the present application deserves to be allowed.

4. The learned APP has opposed grant of bail indicating that whether the offence under Section 328 of the Indian Penal Code was committed or not is a matter of trial and since the applicants were found with the contraband material, they do not deserve consideration.

5. The learned counsel for the applicants has pointed out that in the present case, other than offence under Section 328 of the Indian Penal Code, the remaining offences in question appear to be of minor nature. In so far as offence under Section 328 of the Indian Penal Code is concerned, the Hon'ble Supreme Court in the case of **Joseph Kurian Philip Jose Vs. State of Kerla** (supra), has held that to hold a person to be held liable for the offence under the said provision, it was essential to prove that the accused was directly responsible for administering poison, etc. or causing it to be taken by any person through another. Applying the said position of law, prima facie,

on the basis of material presently on record, it appears that the ingredients of the said offence are not directly made out against the applicants herein.

6. In view of the above, this Court is of the opinion that the above application deserves to be allowed. Accordingly, the application is allowed and the applicants are directed to be released on bail 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 MIDC, Akola City once a week i.e. on Sunday between 10:00 AM to 5:00 PM, till filing of charge-sheet.
- c) The applicants shall co-operate with the investigation.
- d) They shall not tamper with the evidence or influence the witnesses.

7. Application is allowed in above terms.
Hamdast is granted.

8. It is made clear that the observations made in this order are limited to the question of grant of bail to the applicant.

JUDGE