

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

Criminal Application (ABA) No.477 of 2019

**(Rehan Khan Yasin Khan and another .vs. State of Maharashtra through
PSO PS Digras, Dist. Yavatmal)**

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

Court's or Judge's orders.

Mr. S.A. Mohta, Advocate for Applicants
Mr. J.Y. Ghurde, APP for Non-applicant/State.

CORAM : Manish Pitale, J.

DATED : August 09, 2019.

The present application has been filed by the applicants apprehending arrest in connection with first information report (FIR) dated 05.05.2019. By the said FIR, offences were registered against one Abdul Danesh for offences under Sections 188, 272, 273 and 328 of the Indian Penal Code and Sections 16 and 39 of the Food Safety and Standard Act, 2006. It was claimed that the said accused person was driving a truck transporting Gutkha, a substance banned in the State of Maharashtra and upon secret information, the aforesaid truck was seized. The said accused person gave a statement to the Police that he was only a driver and that the vehicle as well as the contraband material belonged to the applicants herein. The contraband material worth about Rs.10,00,000/- was seized.

2. Taking note of the aforesaid facts, particularly the fact that the applicants were not even named in the FIR, on 16.07.2019, this Court issued notice and granted ad-interim protection to the applicants, by making following observations :-

“4. The applicants have approached this Court apprehending arrest in connection with FIR dated 05.05.2019 whereby offences have been registered under Sections 188, 272, 273, 328 of the IPC and Sections 16 and 30 of the Food Safety and Standard Act, 2006. It is pointed out by the learned counsel for the applicants that the applicants are not even named in the FIR and that the person named in the FIR was driving the vehicle wherein the prohibited goods i.e. Gutkha was recovered. It is pointed out that only upon the statement of the named accused person that the contraband material belonged to the applicants that the Police is seeking custody of the applicants. It is pointed out that invoking Section 328 of the IPC in the present case would be misplaced as there is no act attributable to the applicants whereby ingredients of the said offence could be said to be made out. It is also pointed out that the named accused person has been granted anticipatory bail by the Sessions Court by order dated 23.05.2019.

5. In view of the above, a case for grant of ad-interim protection is made out.

6. Hence, in the event the applicants are arrested in Crime No. 280 of 2019 registered at Police Station Digras, district Yavatmal, they shall be released on bail on furnishing P.R. bond of Rs.50,000/- (Rs. Fifty Thousand) each and a surety in the like amount. The applicants shall attend the aforesaid Police Station once a week i.e. on Sunday between 10 a.m. and 5 p.m. They shall cooperate with the investigation and they shall not tamper with the evidence or influence the

witnesses.”

3. In the reply filed on behalf of the non-applicant/State, it has been stated that the contraband material was sent for chemical analysis and the report of the Food Analyst at the food testing laboratory confirmed the material contravened the concerned order issued by the Government in the interest of public health. On this basis, it was claimed that since there was ample material to show that the applicants were owner of the contraband material as well as the vehicle, the application was required to be dismissed.

4. Considering the fact that the applicants were not named in the FIR, as also the fact that after ad-interim protection was granted by this Court, the applicants have indeed abided by the directions given by this Court, a case for grant of relief in the present case is made out. The apprehension expressed by the learned APP that the applicants may not cooperate with the investigation, can be taken care of by directing the applicants to continue to cooperate with the aforesaid directions given by this Courts.

5. Hence, the present application is allowed and the applicants are granted anticipatory bail by confirming the ad-interim protection granted to them by order dated 16.07.2019. The applicant shall continue to cooperate with the investigation and they shall attend the Police Station as directed, till filing of the charge-sheet.

JUDGE

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