

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

913 ANTICIPATORY BAIL APPLICATION NO. 922 OF 2020

Syed Ali S/o. Syed Hasan,
Age. 49 years, Occ. Business,
R/o. Iqbal Nagar, Purna,
Tq. Purna, Dist. Parbhani.

...Applicant.

Versus

The State of Maharashtra.

...Respondent.

Advocate for Applicant : Mr. S.G. Chapalgaonkar.
APP for Respondent : Mr. S.B. Narwade.

**CORAM : MANGESH S. PATIL, J.
DATE : 26.11.2020**

Per Court :

This is an application under Section 438 of the Code of Criminal Procedure, wherein accused No. 3 from Crime No. 571/2020, registered with Nanalpeth Police Station, District Parbhani, for the offence punishable under Section 328, 188, 272, 273 of the Indian Penal Code, is seeking bail in the event of his arrest.

2. In brief, it is alleged that the police party received a tip that some prohibited articles were being transported in a vehicle. The vehicle was intercepted and huge stock of Jarda, Pan Masala, etc. was seized. The driver

and the cleaner of the vehicle who are arrayed as accused Nos. 1 and 2 were arrested. It is alleged that it was transpired that articles were being supplied to the present applicant on behalf of the fourth accused.

3. Learned Advocate for the applicant submits that this Court has consistently held that in the absence of any allegations about administration of poisonous substance, the offence cannot be said to have been committed under Section 328 of the IPC. Rest of the offences are bailable ones. Already the stock has been seized. In fact merely on the basis of a statement of a co-accused that it is now being alleged that the contraband articles were to be delivered to the applicant. Therefore, when the articles were not in conscious possession of the applicant, even otherwise also he cannot be attributed with the offence punishable under Section 328 of IPC.

4. Learned APP submits that the decision of the Division Bench at the Principal seat of this Court which is subsequently being followed by this Court in several matters has been challenged before the Supreme Court and has been stayed. He, therefore, submits that one cannot readily refer to and rely upon such consistent view of the Court which is pending scrutiny by the apex Court.

5. He would submit that the other accused who is actually a supplier, for and on whose behalf the driver and the cleaner were transporting the contraband is still at large. Custodial interrogation of the applicant would be necessary to complete the investigation. Going by the wording of the offence contained in section 328 of the IPC, even intention to commit or facilitate commission of the offence knowing it to be likely to cause hurt is made punishable and not merely its administration. He, therefore, submits that application may be rejected.

6. I have carefully gone through the papers. As far as facts are concerned, the role attributed to the applicant is to the effect that the contraband articles were to be delivered at his place. Meaning thereby, the articles were not in his actual conscious possession. It is only at the instance of the co accused that he is now being sought to be implicated. If such is the state of affairs, *prima facie* the ingredients for the offence punishable under Section 328 would be missing qua the applicant.

7. The entire stock of contraband articles has already been seized. The Investigating Officer has had an opportunity to interrogate the driver and the cleaner who are the co accused to trace out the supplier and the manufacturer. Considering these aspects, particularly, when there are no criminal

antecedents, custodial interrogation of the applicant does not seem to be imperative.

8. The application is allowed. In the event of the arrest of the applicant in connection with Crime No. 571/20, registered with Nanalpeth Police Station, District Parbhani, he shall be released on bail on furnishing Personal Recognizance for an amount of Rs. 25,000/- (Rupees Twenty Five Thousand) and a surety in the like amount subject to following conditions :

(a) He shall attend the concerned Police Station on two consecutive Saturdays starting from 28.11.2020 and shall cooperate the Investigating Officer.

(b) He shall not tamper the evidence or influence the witnesses and shall not get involved in a similar offence.

(MANGESH S. PATIL, J.)