

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

930 ANTICIPATORY BAIL APPLICATION NO.1007 OF 2020

FEROZ KHAN S/O KHAJA KHAN

VERSUS

STATE OF MAHARASHTRA

...

Mr. G.R. Syed, Advocate for applicant

Mr. V.M. Kagne, APP for respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09th DECEMBER, 2020

ORDER :

1 Present application has been filed under Section 438 of the Code of Criminal Procedure, 1973. The applicant is apprehending his arrest in connection with Crime No.294/2020 dated 30.09.2020 registered with Kotwali Police Station, Dist. Parbhani, for the offence punishable under Section 188, 272, 273, 328 read with Section 34 of the Indian Penal Code.

2 Heard learned Advocate Mr. G.R. Syed for applicant and learned APP Mr. V.M. Kagne for respondent.

3 It has been vehemently submitted on behalf of the applicant that he is falsely implicated on the basis of statement of co-accused. In fact, co-accused was arrested and he has been released on regular bail. Custodial interrogation of the applicant is not warranted as the main allegation in the complaint regarding sale of gutkha was found in the custody of co-accused and the co-accused has been released on regular bail. Further, nothing is required to be recovered from the applicant. Offence under Section 328 is not attracted and other charges are bailable. He, therefore, prayed for anticipatory bail.

4 Per contra, the learned APP strongly opposed the application and supported the reasons given by the learned Additional Sessions Judge. The learned Additional Sessions Judge has rightly dismissed the application for anticipatory bail. The learned APP submitted that the physical custody of the applicant is necessary to find out further stock of contraband articles and prayed for rejection of the application.

5 At the outset, it is to be noted that earlier this Court has granted interim protection to the applicant. Further, the main allegation contained in the FIR is as regards selling of gutkha which was found in custody of the co-accused and he has been enlarged by the Court below on regular bail. Nothing is required to be seized at the instance of the applicant. Further, the

allegations made in FIR show that the accused persons were found transporting the contraband articles. Therefore, Section 328 of the Indian penal Code is not prima facie made out. Other sections are bailable.

6 In this regard, reliance can be placed on the Division Bench decision (**Nagpur Bench**) in **Nilesh Narayan Sanghavi vs. The State of Maharashtra** [Criminal Application (APL) No.442 of 2020], wherein after taking note of decision in **Malkiat Singh vs. State of Punjab**, AIR 1970 SC 713 and **Anand Ramdhani Chaurasia and another vs. State of Maharashtra and others, 2019 DGLS (Bom.) 1020** it has been held, that mere transportation of Gutkha, Pan Masala, Scented Tobacco i.e. contraband articles would not attract Section 328 of the Indian Penal Code.

6.1 Further, reliance can be placed on **Ashfaque Ahmed s/o Waseem Ahmed vs. State of Maharashtra, 2016 SCC OnLine Bom 3990** and **Ajim @ Raju Majid Saudagar vs. State of Maharashtra, 2015 SCC OnLine Bom 8115** with companion matter.

6.2 Further reliance can be placed on **Ganesh Pandurang Jadhao and another vs. The State of Maharashtra and others** [Criminal Writ Petition No.1027 of 2015] with companion matters decided by the Division Bench of this Bench on 15.10.2020, which is also on similar lines. First Information

Reports in respect of offence under Section 328 of the Indian Penal Code have been quashed and set aside.

7 Therefore, application deserves to be allowed. Hence, following order.

ORDER

1 The application stands allowed.

2 The order passed by learned Additional Sessions Judge-4, Parbhani in Criminal M.A. Bail No.845/2020 dated 14.10.2020 is hereby set aside. Said application stands allowed.

3 The ad-interim protection, granted by this Court earlier to applicant vide order dated 03.11.2020, is hereby confirmed and made absolute. In other words, if the applicant is not formally arrested, in the event of arrest of the applicant viz. Feroz Khan s/o Khaja Khan, in connection with Crime No.294/2020 dated 30.09.2020 registered with Kotwali Police Station, Dist. Parbhani, for the offence punishable under Section 188, 272, 273, 328 read with Section 34 of the Indian Penal Code, he be released on PR. of Rs.15,000/- with solvent surety in the like amount.

4 The applicant shall not indulge in any criminal activity nor he

should tamper with the prosecution evidence, in any manner.

5 He should cooperate with the investigation and shall attend the concerned Police Station as and when called by the Investigating Officer.

(Smt. Vibha Kankanwadi, J.)

agd