

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

25 ANTICIPATORY BAIL APPLICATION NO.1117 OF 2020

HABIB MADAN SHAIKH

VERSUS

STATE OF MAHARASHTRA

...

Mr. S.P. Rathod, Advocate for applicant

Mr. S.Y. Mahajan, APP for respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 14th 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.377/2020 dated 05.11.2020 registered with M.I.D.C., CIDCO Police Station, Aurangabad, for the offence punishable under Section 188, 273, 328 of the Indian Penal Code and under Section 59 of the Food, Safety and Standards Act, 2006.

2 Heard learned Advocate Mr. S.P. Rathod for applicant and learned APP Mr. S.Y. Mahajan for respondent.

3 It has been vehemently submitted on behalf of the applicant that he is innocent person and falsely implicated on the basis of statement of co-accused. The co-accused has been released on bail by learned Sessions Court on 09.11.2020. The applicant has no concerned with the alleged offence. Informant has lodged the First Information Report against the accused Damodar Sonaji Khade. Bare perusal of the FIR it appears that the applicant is not involved in the alleged offence. Except disclosure of his name by accused Khade there is nothing incriminating against the applicant. The Investigating Officer is likely to arrest the present applicant. Under such circumstance, the applicant may be released on anticipatory bail

4 Per contra, the learned APP strongly opposed the application. It is submitted that during police custody of co-accused name of present applicant has been disclosed. Crime No.441 of 2020 for the offence punishable under Section 188, 273, 328 read with 34 of the Indian Penal Code and Section 59 of Food Act is pending against the present applicant. It is to be investigated as to where from he brought the gutkha and to whom he has provided the same with co-accused, by which vehicle he has provided said muddemal to co-accused and it is also to be investigated as to whether any other person has helped him out in commission of said crime. The learned Additional Sessions Judge has rightly rejected the application for

anticipatory bail. The learned APP submitted that the physical custody of the applicant is necessary 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 storing and possessing 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, Aurangabad in Bail Petition No.1776 of 2020 dated 15.11.2020 is hereby set aside. Said application stands allowed.

3 The ad-interim protection, granted by this Court earlier to applicant vide order dated 20.11.2020, 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. Habib Madan Shaikh, in connection with Crime No.377/2020 dated 05.11.2020 registered with M.I.D.C., CIDCO Police Station, Aurangabad, for the offence punishable under Section 188, 273, 328 of the Indian Penal Code and under Section 59 of the Food, Safety and Standards Act, 2006, he be released on P.R. 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 and cooperate with the investigation.

(Smt. Vibha Kankanwadi, J.)

agd