

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 ANTICIPATORY BAIL APPLICATION NO.1169 OF 2020

SARJERAO SAHEBRAO CHAVAN

VERSUS

STATE OF MAHARASHTRA

...

Mr. S.K. Chavan, Advocate for applicant

Mr. S.Y. Mahajan, APP for respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 16th 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.220/2020 dated 21.11.2020 registered with Palam Police Station, Dist. Parbhani, for the offence punishable under Section 188, 272, 273, 328 of the Indian Penal Code.

2 Heard learned Advocate Mr. S.K. Chavan 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 in this crime. He has not committed any offence. The false complaint is lodged against the applicant. The material which is recovered do not contain any poisonous and stupefying substance neither it is intoxicating nor unwholesome drugs. Therefore, Section 328 of the Indian Penal Code does not attract against the applicant. Other sections are bailable. There is no conscious possession of the applicant over the raided spot. Other co-accused are released on bail by Sessions Court. Police has seized all the muddemal on the spot. Nothing is left to be recovered or discovered at the instance of applicant. The investigation is almost completed. Name of applicant is not mentioned in the FIR. He has no criminal antecedents as he has not convicted in any of the criminal case. The applicant is Karta of his family and reputed person in the society. He, therefore, prayed for anticipatory bail.

4 Per contra, the learned APP strongly opposed the application on the grounds that the offence is of serious in nature. Strong prima facie case is made out against the applicant. There is direct evidence available against him. The investigation is in progress. The statement of witnesses and panchnama of seized muddemal also support the prosecution case. Therefore, custodial interrogation of the applicant is necessary. If the

applicant is released on bail, then he will create hurdle in the investigation and again commit such type of crime. He, therefore, prayed for rejection of the application.

5 At the outset, it is to be noted that name of the present applicant is not mentioned in the FIR. Co-accused are arrested, interrogated and released on bail by the Sessions Court. Police has seized all the muddemal on the spot, therefore, nothing is left to be recovered or discovered at the instance of applicant. The investigation is almost completed. Therefore, physical custody of the applicant is not required for the purpose of investigation. Further, the allegations made in FIR show that the accused persons were found in possession of 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 **Ashfaq 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, Gangakhed, Dist. Parbhani in Criminal Miscellaneous Application (Bail) No.234 of 2020 dated 05.12.2020 is hereby set aside. Said application

stands allowed.

3 In the event of arrest of the applicant viz. Sarjerao Sahebrao Chavan, in connection with Crime No.220/2020 dated 21.11.2020 registered with Palam Police Station, Dist. Parbhani, for the offence punishable under Section 188, 272, 273, 328 of the Indian Penal Code, 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.

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.)

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