

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

ANTICIPATORY BAIL APPLICATION NO. 758 OF 2021

Gorakh Ramji Bharwad,
Age : Years, Occu. Labour,
R/o. Village Saver, Tq. Shirpur,
Dist. Dhule.

...Applicant

Versus

The State of Maharashtra

...Respondent

.....
Mr. Vikrant P. Raje, Advocate for the applicant
Mrs. Vaishali S. Choudhari, APP for respondent / State
.....

CORAM : V. G. BISHT, J.

DATE OF RESERVING THE ORDER : 16th September, 2021
DATE OF PRONOUNCING THE ORDER : 20th September, 2021

PER COURT : -

1. This is an application under Section 438 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No. 0010 of 2021, registered with Thalner Police Station, District Dhule, for the offences punishable under Section 328 r/w 34 of the Indian Penal Code, 1860 and under Sections 65(e), 65(f), 67, 83 and 83(b) of the Maharashtra Prohibition Act, 1949.

2. The prosecution case, in short, is that on 22.02.2021 at about 05:45 am, on the basis of information received, the informant

and other staff members raided the hut of Bhika Gangaram Bhil, which is one kilometer away from Saver village and found accused Babalu Sonu More, Haresh Tappubhai Patgir, Mansing Majibhai Kansagar and Gorakh Ramji Bharwad (applicant) in possession of spirit meant for preparation of illicit liquor without any permit. Those accused were preparing to shift the illicit liquor in a Car, however, after seeing the police raiding party, they tried to run away. Out of them, two were arrested on the spot whereas other two persons made their escape good. One of them is the present applicant.

3. Mr. Vikrant P. Raje, learned Counsel for the applicant, submits that perusal of the FIR does not, in any manner, reflect that the applicant and the said accused were in possession of poisonous substance, which was to be used in manufacturing of liquor. Thus, *prima facie*, the provisions of Section 328 of the Indian Penal Code are not applicable. The learned Counsel then next submitted that the other co-accused have already been released on regular bail by the learned trial Court. Having regard to the nature of allegations, the physical custody of the applicant is not at all necessary, argued learned Counsel.

4. Mrs. Vaishali S. Choudhari, learned APP, on the other hand, would oppose the submissions by contending that the applicant

and others were found in manufacturing illicit liquor with the help of spirit and that too without any permit or license, however, the present accused fled away from the spot. The custody of applicant is necessary for further investigation. There being no merit in the application, the same is liable to be rejected, argued learned APP.

5. It may be noted from the FIR that the applicant and other accused have been charged under Section 328 of the Indian Penal Code along with relevant provisions of Maharashtra Prohibition Act. On the face of the contents of the FIR, I am sceptical about the attraction of Section 328 of the Indian Penal Code. As far as the provisions of Maharashtra Prohibition Act are concerned, the Investigating Officer is already in possession of muddemal property which was found on the spot. I do not appreciate that the custodial interrogation of the applicant is necessary.

6. In view of above, I am inclined to extend the benefit of pre-arrest bail in favour of the applicant. Hence, I pass the following order.

ORDER

- i. The application is allowed.
- ii. In the event of arrest of the applicant, namely, Gorakh Ramji Bharwad in connection with Crime No. 0010 of

2021, registered with Thalner Police Station, District Dhule, for the offences punishable under Section 328 r/w 34 of the Indian Penal Code, 1860 and under Sections 65(e), 65(f), 67, 83 and 83(b) of the Maharashtra Prohibition Act, 1949, the applicant is directed to be enlarged on bail on his furnishing P.R. Bond of Rs.20,000/- [Rs. Twenty thousand], with one or two solvent sureties in the like amount.

- iii. The applicant shall attend the concerned police station as and when called and shall cooperate with the police in the investigation.
- iv. The applicant shall not tamper with the prosecution evidence in any manner.

[V. G. BISHT]
JUDGE