

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

931 APPLICATION FOR CANCELLATION OF BAIL NO.141 OF 2021

SHILPA RAJENDRA SHINDE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. P.B.Pawar, Counsel for applicant

Mr. S.B.Narwade, APP for respondent No.1-State

Mr. C.C.Deshpande, Counsel for respondent No.2

...

CORAM : PRAKASH D. NAIK, J.

DATE : 14th OCTOBER, 2021

PER COURT:

1] The applicant has preferred this application under Section 439(2) of Code of Criminal Procedure (for short, 'Cr.PC.'), seeking cancellation of anticipatory bail granted to respondent No.2 vide order dated 30th May, 2021 passed by Additional Sessions Judge, Dhule in Crime No.97 of 2021 registered with Dhule City Police Station for the offences under Sections 308 and 273 of Indian Penal Code (for short, 'IPC').

2] The applicant is the complainant. On the basis of private complaint filed before the Court of learned Magistrate, Court No.5, Dhule, directions were issued under Section 156(3) of Cr.P.C. by order dated 20th April, 2021 and in pursuant to that FIR was registered on 22nd April, 2021. The case of the prosecution is that the complainant is

having license for selling country liquor. She used to purchase liquor in wholesale from respondent No.2. On 9th February, 2021, she purchased country liquor from respondent No.2. The complainant sold the liquor to her customers. After consumption of liquor, within a short span of time, customers suffered vomiting and nausea. The customers were taken to hospital. The doctors examined the patients and it was opined that the patients had suffered on account of consumption of liquor. The liquor Sold to complainant was contaminated. The liquor was dangerous to human life.

3] Learned Counsel for the applicant has submitted that the learned Sessions Judge has committed error in allowing the application for anticipatory bail preferred by Respondent No.2. Custodial interrogation of the accused was necessary. Illicit liquor was sold to the complainant by the accused. The Court overlooked the gravity of the offence. The learned Judge has erroneously exercised the powers under Section 438 of Cr.P.C. The impugned order is contrary to law. The complainant had forwarded representations to various departments. Medical treatment was given to the patients, who had suffered due to consumption of liquor. Hence, order granting anticipatory bail be set aside.

4] Learned Counsel for respondent No.2 submitted that the learned Sessions Judge has passed well reasoned order. Custodial interrogation of the accused was not necessary. The respondent No.2 has complied the directions of the Court stipulated in the impugned order. The entire investigation is over. The police did not take cognizance of complaint filed by the complainant and she has filed private complaint in which the directions were issued under Section 156(3) of Cr.P.C. The respondent No.2 is the wholesaler of country liquor since last 40 years. There was no complaint against him in the past. There is dispute between the complainant and the respondent No.2 on account of the property. No other authority had initiated action against the accused. The sample of liquor was not forwarded to any authority. The same batch of liquor was supplied to other persons, however, no complaint is received from them alleging sale of adulterated or harmful liquor. Section 308 of IPC is not attracted nor Section 273 of IPC is applicable in this case. The learned Sessions Judge had taken into consideration the factual aspects of the case and allowed the application.

5] Learned APP submitted that there is evidence to support the case of the prosecution against the respondent No.2. The accused had knowledge that the country liquor sold by the applicant is adulterated and on consumption, there was likelihood of culpable homicide. The

accused is the authorized seller of liquor on wholesale basis. The complainant had sold the liquor to the customers and it was found to be contaminated, which was known to the accused. Statements of witnesses were recorded. Seizure panchanama was conducted. The learned Sessions Judge ought not to have granted anticipatory bail to the accused.

6] I have perused the documents annexed to the application as well as investigation papers. As stated above, the case of the prosecution is that the complainant had purchased the liquor from the accused. On consumption of liquor, the customers had suffered. The contention of the respondent No.2 before the learned Sessions Judge was that, no individual had made any complaint about supply of illicit liquor by the accused. There is dispute between the accused and the complainant on the account of land situated near the hotel of complainant. In the FIR, names of customers who consumed the liquor were not mentioned. During investigation it was not found that the liquor was contaminated and there was no attempt to commit culpable homicide. The police had not taken cognizance of the complaint and that on the basis of private complaint, directions were issued under Section 156(3) of Cr.P.C. In the complaints forwarded by the complainant to

authorities, names of customers, who consumed the liquor were not mentioned.

7] Learned Sessions Judge has referred to the submissions advanced by both the sides. After considering the rival arguments, it was observed that while dealing with the application under Section 438 of Cr.P.C., it is necessary to consider whether custodial interrogation of the accused is necessary. Crime was registered on the basis of order passed by learned JMFC in Misc.Application preferred by the applicant. The informant is a retail seller of country liquor and the accused is wholesaler of country liquor. The business is conducted in the name and style as 'Maharashtra Liquor'. On 9th February, 2021, liquor was supplied to the informant by Maharashtra Liquor. The complainant had forwarded applications to District Health Officer, District Superintendent of Police, Superintendent of State Excise, District Magistrate and Commissioner of State Excise. In all these complaints, the names of the customers, who had consumed liquor were not reflected. Statements of Jayesh Patil, Walmik Bhamre, Dharmendra Kumar and Rahul Gosavi were recorded. Statement of Doctor Sonawane is recorded. The aforesaid statements were recorded in the month of April, 2021. The condition of the customers was out of danger. Whether the liquor supplied to the informant is adulterated is

a matter of analysis by competent authority. In the Misc.Application preferred before the Court of JMFC, the informant has contended that as per her complaint, Excise Inspector, Dhule had made inquiry with her on 25.02.2021. Her statement is recorded. Out of 9 boxes, 8 boxes were taken by Excise Department for the purpose of analysis. On 26.02.2021, 24 sealed bottles were seized by City Police Station, Dhule. No scope is available to applicant to tamper or to make interference. Copy of transport pass, which is in the name of the informant, particulars of liquors supplied are specifically mentioned. The batch number of Tango Punch Liquor is 511 and Tango Santra Liquor is 729. The batch number of Vokhardt Punch liquor is 185. The liquor is already seized. Nothing was to be recovered from the accused. Whether the liquor supplied by the applicant is adulterated or bogus is the matter of analysis. Statements of witnesses are already recorded. Hence, custodial interrogation is not necessary.

8] The application under Section 438 of Cr.PC. was allowed subject to conditions stipulated therein. The respondent was directed to deposit Rs.2 lakhs towards cash security. He was directed to attend the police Station twice a week. He was also directed not to tamper the evidence of the prosecution or its witnesses in any manner. It is

not the grievance of the prosecution that the applicant had breached the conditions.

9] Learned counsel for the respondent No.2 had tendered the report submitted by Senior Scientific Officer, Chemical Testing Department, Haffkine Institute dated 28th April, 2021 to Inspector, State Excise Department, Dhule City Division, Dhule in respect to the liquor seized from the informant. The report indicates that the sample complied with the test for the absence of harmful ingredients such as methanol, chloral hydrate, barbituric acid and its derivatives. The opinion expressed therein indicates that the sample is of standard quality as they complied with the tests for the content of ethyl alcohol and for the absence of harmful ingredients for country liquor specified in Annexure "A" to the Circular dated 18th July, 1974 issued by the Commissioner, State Excise, Maharashtra State, Mumbai. Statements of various witnesses are recorded. Investigation is complete.

10] In the light of aforesaid factual aspects, the interference in the impugned order granting anticipatory bail to the respondent No.2 is not warranted. Hence, I pass the following order.

ORDER

Application for Cancellation of Bail No.141 of 2021 is
rejected and disposed of

(PRAKASH D. NAIK, J.)

sarowar