

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.944 OF 2020

MUNJABHAU MANCHAKRAO ROKDE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for the Applicant : Mr. S.K. Chavan
APP for the Respondent - State : Mr. N.T. Bhagat

...

AND

ANTICIPATORY BAIL APPLICATION NO.1168 OF 2020

SHUBHAM RAMANLAL BHALGAT
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. N.B. Narwade
APP for the Respondent - State : Mr. S.B. Narwade

...

AND

ANTICIPATORY BAIL APPLICATION NO.1183 OF 2020

PARVEJ RASHID PATHAN
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. N.S. Ghanekar
APP for the Respondent - State : Mr. N.T. Bhagat

...

AND

ANTICIPATORY BAIL APPLICATION NO.1184 OF 2020

ALLAH BAKSH SHAIKH MOULANA
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. A.V. Lavte
APP for the Respondent - State : Ms. V. S. Choudhari

...

AND
ANTICIPATORY BAIL APPLICATION NO.1205 OF 2020

CHE TAN KANTILAL SABADRA
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. S.G. Ladda
APP for the Respondent - State : Mr. S.B. Narwade

...

AND
ANTICIPATORY BAIL APPLICATION NO.44 OF 2021

SHAIKH AMER SHAIKH BABA
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Md. Imran Khan M Ismail Khan
APP for the Respondent - State : Mr. V.S. Badakh

...

AND
ANTICIPATORY BAIL APPLICATION NO.50 OF 2021

SHIVAM DIGAMBAR NIRAS
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. A.D. Khot h/f.
Mr. P.D. Bachate
APP for the Respondent - State : Mr. S.B. Narwade

...

AND
ANTICIPATORY BAIL APPLICATION NO.81 OF 2021

ANIS PATEL S/O. MAJID PATEL
VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. A.R. Muley and
Mr. Shaikh Nayyim Shahabuddin
APP for the Respondent - State : Mr. V.S. Badakh

...

AND

ANTICIPATORY BAIL APPLICATION NO.102 OF 2021

SOMNATH SHANKARAPPA AAGRE

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. R.R. Karpe
APP for the Respondent - State : Ms. V.S. Choudhari

...

AND

ANTICIPATORY BAIL APPLICATION NO.237 OF 2021

SACHIN SHIVAJIRAO LONDHE

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. P.B. Rakhunde
APP for the Respondent - State : Mr. S.B. Narwade

...

AND

ANTICIPATORY BAIL APPLICATION NO.239 OF 2021

SYED SAMSHER SYED ZAHIR

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. K.S. Chavan
APP for the Respondent - State : Mr. V.S. Badakh

...

AND

ANTICIPATORY BAIL APPLICATION NO.285 OF 2021

VIJAYKUMAR DHONDIRAM TAPDIYA

VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. B. N. Gadegaonkar
APP for the Respondent - State : Mr. S.B. Narwade

...

AND
ANTICIPATORY BAIL APPLICATION NO.290 OF 2021

MAHARUDRA @ AABA NARAYAN MULE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. S.J. Salunke
APP for the Respondent - State : Mr. N.T. Bhagat

...

AND
ANTICIPATORY BAIL APPLICATION NO.292 OF 2021

ANAVEERAPPA GURUPADAPPA TENGALE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. R.K. Shinganapure
APP for the Respondent - State : Mr. S.B. Narwade

...

AND
ANTICIPATORY BAIL APPLICATION NO.301 OF 2021

SYED SATTAR S/O. SYED BABU
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. G.R. Syed
APP for the Respondent - State : Mr. S.B.Narwade

...

AND
ANTICIPATORY BAIL APPLICATION NO.316 OF 2021
WITH ABA/269/2021

GANESH ASHOK HAADADE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Joydeep Chatterji,
Mr. G.P. Darandale
APP for the Respondent - State : Mr. N.T. Bhagat

...

AND
ANTICIPATORY BAIL APPLICATION NO.344 OF 2021

ASHOK SAHEBRAO SAKRATE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. S.J. Salunke
APP for the Respondent - State : Mr. S.B. Narwade

...

AND
ANTICIPATORY BAIL APPLICATION NO.394 OF 2021

LAXMAN @ LAKHAN DEVIDAS RATHOD
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. S.S. Jadhav
APP for the Respondent - State : Mr. V.S. Badakh

...

AND
ANTICIPATORY BAIL APPLICATION NO.403 OF 2021

KETAN LALIT GANDHI
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. N. V. Gaware
APP for the Respondent - State : Mr. A.V. Deshmukh

...

AND

ANTICIPATORY BAIL APPLICATION NO.416 OF 2021

VACHIT S/O RAMKISHAN PAWAR
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. A. R. Borulkar
APP for the Respondent - State : Mr. V.S.Choudhari

...

AND

ANTICIPATORY BAIL APPLICATION NO.434 OF 2021

MADHAV RAMCHANDRA NAVLE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant : Mr. C.C. Deshpande
APP for the Respondent - State : Mr. S.B. Narwade

...

AND

ANTICIPATORY BAIL APPLICATION NO.436 OF 2021

MUJEEB MUSA SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant : Mr. C.C. Deshpande
APP for the Respondent - State : Mr. V.S. Badakh

...

ANTICIPATORY BAIL APPLICATION NO.437 OF 2021

MOHAMMED ASIF MOHAMMED ISHAQUE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant : Mr. A.R. Syed
APP for the Respondent - State : Ms. V.S. Choudhari

...

AND

ANTICIPATORY BAIL APPLICATION NO.498 OF 2021

SAGAR SHAMRAO MANE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. S.K. Chavan
APP for the Respondent - State : Mr. V.S.Badakh

...

AND

ANTICIPATORY BAIL APPLICATION NO.522 OF 2021

ANIL BHAUSAHEB BHOJANE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicants : Mr. A.R. Borulkar
APP for the Respondent - State : Mr. V.S. Badakh

...

AND

ANTICIPATORY BAIL APPLICATION NO.540 OF 2021

MUJAHID KHAN S/O NASEEB KHAN PATHAN
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. S.R. Bagal
APP for the Respondent - State : Mr. S.B. Narwade

...

AND

ANTICIPATORY BAIL APPLICATION NO.594 OF 2021

MOHAMMAD FARID MOHAMMAD ZAKERIYA
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Govind A.Kulkarni, h/f Mr. D.R.Deshmukh
APP for the Respondent - State : Mr. V.S. Badakh

...

AND
ANTICIPATORY BAIL APPLICATION NO.608 OF 2021

MOHAMMAD IBRAHIM MOHAMMAD HAKIMUDDIN SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. C.C. Deshpande
APP for the Respondent - State : Mr. V.S. Badakh

...
AND
ANTICIPATORY BAIL APPLICATION NO.666 OF 2021

SHABANA BEE SHAIKH MOHAMMAD
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. A. R. Syed
APP for the Respondent - State : Mr. S.B.Narwade

...
AND
ANTICIPATORY BAIL APPLICATION NO.687 OF 2021

RAMESH RAGHUNATH MANE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Karpe Rahul R.
APP for the Respondent - State : Ms. V.S. Choudhari

ANTICIPATORY BAIL APPLICATION NO.749 OF 2021

PRATAP KASHINATH WAKLE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. S.S. Chapalgaonkar
APP for the Respondent - State : Mr. A.V. Deshmukh

{9}

ABA 749.21 w 49 other.odt

...

AND

ANTICIPATORY BAIL APPLICATION NO.796 OF 2021

BARKUSING GORUSING RAJPUT

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. S.S. Chapalgaonkar
APP for the Respondent - State : Mr. A.V. DESHMUKH

...

AND

ANTICIPATORY BAIL APPLICATION NO.804 OF 2021

SUNIL ABAJI BORSE AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicants : Mr. S.S. Jadhav
APP for the Respondent - State : Ms. V.S. Choudhari

...

AND

ANTICIPATORY BAIL APPLICATION NO.831 OF 2021

AMIT MAHENDRA AGRAWAL

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. D.S. Bagul
APP for the Respondent - State : Mr. S.B. Narwade

...

AND

ANTICIPATORY BAIL APPLICATION NO.868 OF 2021

ABDUL RAHMAN S/O. ABDUL NABI BHAGWAN @ ANTULE

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. A.B. Jagtap
APP for the Respondent - State : Ms.V.S. Choudhari

...

AND

ANTICIPATORY BAIL APPLICATION NO.875 OF 2021

ANTICIPATORY BAIL APPLICATION NO.886 OF 2021

GAJANAN BALASAHEB BARAKHUDE

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicants : Mr. M.K. Bhosle
APP for the Respondent - State : Mr. S.B. Narwade

...

AND

ANTICIPATORY BAIL APPLICATION NO.886 OF 2021

RAMRAO @ SONU PANCHAL S/O. SUDAM BARAKHUDE

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Bhosle Mahesh K.
APP for Respondent : Mr. S.B. Narwade

AND

ANTICIPATORY BAIL APPLICATION NO.917 OF 2021

ABDUL WAJID S/O. ABDUL WAHID

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. R.J. Nirmal
APP for the Respondent - State : Mr. N.T. Bhagat

...

AND

ANTICIPATORY BAIL APPLICATION NO.926 OF 2021

MANIK BAPURAO KADAM
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. S.J. Salunke
APP for the Respondent - State : Mr. A.V. Deshmukh

...

AND
ANTICIPATORY BAIL APPLICATION NO.972 OF 2021

MANZOOR AHMED BASHIR AHMED
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for the Applicant : Mr. Shaikh Mazhar A.Jahagirdar
APP for the Respondent - State : Mr. S.B. Narwade

...

AND
ANTICIPATORY BAIL APPLICATION NO.990 OF 2021

SAIFANSAB CHANDSAB TAMBOLI
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. R.R. Karpe
APP for the Respondent - State : Mr. S.B. Narwade

...

AND
ANTICIPATORY BAIL APPLICATION NO.1002 OF 2021

MOHAMMED JUNED S/O. ABDUL KARIM
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. B.N. Gadegaonkar
APP for the Respondent - State : Mr. V.S. Badakh

...

AND
ANTICIPATORY BAIL APPLICATION NO.1016 OF 2021

OMKAR RAJESH CHANNAWAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. M.K. Bhosle
APP for the Respondent - State : Mr. N.T. Bhagat

...
AND
ANTICIPATORY BAIL APPLICATION NO.1032 OF 2021

SHAIKH GAFFAR S/O. SHAIKH MAKDUM AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. S.G. Chapalgaonkar
APP for the Respondent - State : Mr. S.B. Narwade

...
AND
ANTICIPATORY BAIL APPLICATION NO.1033 OF 2021
AND
ANTICIPATORY BAIL APPLICATION NO.1036 OF 2021

ASHOK SAHEBRAO SAKRATE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. R.G. Hange and
Mr. A.R. Hange
APP for the Respondent - State : Ms. V.S. Choudhari
and Mr. V. S. Badakh (ABA No.1036/2021)

AND
ANTICIPATORY BAIL APPLICATION NO. 1067 OF 2021

AHAD SHAIKH MUSHTAK
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. Avinash R. Borulkar, Advocate for applicant
Mr. S.B. Narwade, APP for respondent.

WITH
ANTICIPATORY BAIL APPLICATION NO. 1071 OF 2021

RAISODDIN RAFIYODDIN MOMIN
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. Amar V. Lavte, Advocate for applicant
Mr. S.B. Narwade, APP for respondent.

ANTICIPATORY BAIL APPLICATION NO. 1090 OF 2021

HARSHAL VIJAYKUMAR PATNI
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. Shailesh S. Chapalgaonkar, Advocate for applicant
Mr. S.B. Narwade, APP for respondent.

...
CORAM : V. G. BISHT, J.
RESERVED ON : 21ST SEPTEMBER, 2021
PRONOUNCED ON : 30TH SEPTEMBER, 2021.

PER COURT:

1] The present set of anticipatory bail applications involve common questions of fact and raise a common question of law i.e. applicability of Section 328 of the IPC. Hence, these applications have been heard together by the consent of the parties and are being disposed of by this common order.

2] Having been found with the contraband articles, such as, Jarda, Pan Masala, Flavoured Supari, Scented Tobacco and Mava in

contravention of the notification No. FSSA/Notification/901/7 dated 19.7.1919 and Notification No. FSSA/Notification/901/7 dated 15.7.2020 issued under Section 30(2)(a) of the Food Safety Standard Act, 2006 (hereinafter referred to as “FSS Act” for sake of brevity) by the Commissioner of Food Safety, Maharashtra State, various FIRs under Sections 188, 269, 271, 272, 273, 307, 328, 353 of IPC and Section 59 of the FSS Act, came to be registered.

3] Mr. Chapalgaonkar, learned counsel for the applicants has filed written notes of submissions alongwith judgments in support thereof. Similarly, Mr. Narwade, learned APP has also filed the written notes of submission alongwith judgments in support of his submission.

4] At the very outset, it may be noted that the learned counsel for other applicants have adopted in toto the submissions filed by learned Advocate Mr. Chapalgaonkar,

5] The main submissions of learned counsel for the applicants are two fold. The first submission is that, the concerned Police Officer could not have directly registered offence punishable under Section 328 of IPC against all the applicants inasmuch as a procedure is already in existence under the various provisions of the FSS Act and the police ought to have taken recourse to the procedure laid down under those provisions. Secondly, keeping in mind the ingredients of Section 328 of the IPC, there is no allegation that applicants are directly responsible for administering poisonous substance or causing it to be taken by any person through another and this being so, the question of applicability of Section 328 does not arise. For these reasons the applications deserve to be allowed, argued learned counsel for applicants.

6] The learned counsel for applicants have placed their reliance on number of decisions of this Court, which I would be discussing at an appropriate stage.

7] Mr. A.V. Deshmukh, learned APP, on the other hand, vehemently opposed the submissions by contending that the issue of applicability of Section 328 is adequately dealt with by the various judgments of this Court and it has been held that in the similar facts and circumstances, the ingredients of Section 328 are very much applicable. According to learned APP, these applicants are dealing with contraband articles in contravention of the notification duly issued by the Food Commissioner under Section 30(2)(a) of the FSS Act and were found in possession of huge quantity of contraband articles, thereby clearly attracting the applicability of Section 328 of IPC. According to learned APP, the custodial interrogation of the applicants is very much necessary and if custody of the present applicants is not granted, then investigation will be seriously hampered. The learned APP has also placed reliance on various decisions.

8] Keeping in mind the above submissions, following two ponderable questions emerge for consideration and adjudication :-

[I] The concerned police station could not have directly registered offence punishable under Section 328 etc. of IPC without invoking the procedure and provisions of the FSS Act and hence, whether said action is sustainable in law.

[II] Whether the violation of prohibitory order issued by the Food Safety Commissioner in exercise of powers conferred under Section 30(2)(a) of the FSS Act, which prohibits the manufacture, storage, distribution, transport or sale of tobacco either flavoured or mixed with any of the said additives and whether known by any name whatsoever viz. Ghutka, Pan Malasala, manufactured chewing tobacco with additives, Kharra or otherwise, whether packaged or un-packaged or sold as one product for its consumption, would attract the provisions of Section 328.

9] As far as the first objection of the learned counsel for the applicants is concerned, in the matter of *State of Maharashtra vs. Syed Hasan Syed Subhan 2018 AIR (SC) 5348* the Honourable Apex Court has clearly held that the non-compliance of the prohibitory order which prohibits transportation and sale of Ghutka and Pan Masala, would entail a prosecution under Section 55 of the FSS Act, but it has been held that the provisions of the Indian Penal Code can also be invoked and applied. The Apex Court did not find favour with the findings of the High Court, which had held that the non-compliance of the notification issued by the Food Safety Commissioner can be penalized only by imposing fine mentioned under Section 55 of FSS Act and no complaint under the Indian Penal Code could have been preferred by the Food Security Officer for violation of the prohibitory order. While setting aside the said finding, Their Lordships of the Apex Court held that the High Court was wrong in holding that the action can be initiated against the defaulters only under Section 55 or under Section 68 of the FSS Act, for adjudication.

10] The following observations of the Supreme Court need a note :-

“7. There is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence. Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence. The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the Penal Code, 1860 and at the same time, an offence under any other law. The High Court ought to have taken note of Section 26 of the General Clauses Act, 1897 which reads as follows: “Provisions as to offences punishable under two or more enactments-Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.” 8. In *Hat Singh's case* this Court discussed the doctrine of double jeopardy and Section 26 of the General Clauses Act to observe that prosecution under two different Acts is permissible if the ingredients of the provisions are satisfied on the same facts. While considering a dispute about the prosecution of the Respondent therein for offences under the Mines and Minerals (Development and Regulation) Act 1957 and Penal Code, 1860, this Court in *State (NCT of Delhi) v. Sanjay* held that there is no bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offences. A perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under the Penal Code, 1860 merely because the provisions in the FSS Act prescribe penalties. We, therefore, set aside the finding of the High Court on the first point.”

11] The above observations suitably reply the objection raised by the learned counsel for the applicants that the police could not have invoked Section 328 of IPC.

12] This brings me to the second question, i.e. the applicability or otherwise of Section 328 of IPC. It would be apt and apposite for me to reproduce Section 328 of the IPC, which reads thus :-

“328. Causing hurt by means of poison, etc., with intent to commit an offence :-

Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

13] The Apex Court had an occasion to deal with Section 328 of the IPC in case of ***Joseph Kurian Philip Jose Vs. State of Kerala (1994)6 SCC 535***. The criminal appeals placed before the Apex Court arose out of a phase of sporadic incidents referred to as “Punalur Liquor Tragedy” where certain persons died and others received injuries due to consumption of poisonous adulterated arrack, ethyl alcohol adulterated with methyl alcohol. Cases under Sections 272 and 328 of the IPC and Section 57(a) of the Kerala Abkari Act were registered. On recording a finding of guilt against A-1 and A-4, the Sessions Court imposed sentence. The remaining accused were found guilty of offences punishable under the Abkari Act and were imposed nominal sentences of

fine only. The High Court confirmed the conviction and sentence of A-1 and conviction of A-4 came to be set aside and he was convicted under Section 109 for abetting the offences punishable under Sections 272 and 328 of the IPC. In the backdrop of these facts, the Apex Court was called upon to decide the applicability of Sections 272 and 328 of the IPC against the said Accused. Adulteration of liquor is prohibited under Section 57 of the Abkari Act to a licensed vendor or manufacturer. After making a reference to the provisions of Section 328 of the IPC, the Apex Court observed thus:

“ In order to prove offence under Section 328 the prosecution is required to prove that the substance in question was a poison, or any stupefying, intoxicating or unwholesome drug etc, that the accused administered the substance to the complainant or caused the complainant to take such substance, that he did so with intent to cause hurt or knowing it to be likely that he would thereby cause hurt, or with the intention to commit or facilitate the commission of an offence. It is, therefore, essential for the prosecution to prove that the accused was directly responsible for administering poison etc. or causing it to be taken by any person, through another. In other words, the accused may accomplish the act by himself or by means of another. In either situation direct, reliable and cogent evidence is necessary. Now on that basis it has to be seen whether A-1 had any role to play in directly administering to or causing to be taken the poisonous liquor by Sreedharan Pillai deceased, who had purchased and consumed liquor from a retail shop, with intent to cause hurt to him or knowing it to be likely that it would cause hurt to him. This has to be solved remaining cognizant that Sections 272 and 328 are separate offences described in the Penal Code, 1860.”

“23. As it appears both the findings of the Trial Judge as also by the High Court are somewhat vague and confusing. The Trial Court observed, as is evident from the emphasised portion, that it cannot be said that the accused or any of them knew that arrack mixed with small quantity of methyl alcohol (2.64% as found by the chemical analyst) was likely to cause death or serious bodily injury that is likely to cause death. On this finding applicability of Section 302 or even that of Section 304 I.P.C. has been ruled out. This finding on the fact situation is open to doubt. If the finding be correct that the accused did not have guilty knowledge of causing

death or of likelihood of causing death or of serious bodily injury likely to cause death, how could the guilty knowledge stop in that slide or grading not coming down to take within its arms hurt also. The act of the accused in adulterating liquor per se, as the law then stood sans amendments, would not attract the provision of Section 328 of I.P.C. unless there is positive evidence that A-1 administered the poisoned liquor directly or by Sreedharan, deceased indirectly caused it to be taken by Sreedharan indirectly with the necessary intent and mens rea. This view of the learned Trial Judge as confirmed by the High Court does not appear to us to be sound in the back drop of the death actually occurring. But since it has taken that view it cannot stop short of hurt and so must slip down to a fall downright. Important links in the prosecution case on this particular remain otherwise missing. A-1 would thus have to be acquitted of the charge under Section 328 IPC in carrying out the findings of the High Court to their logical end.”

14] The above observations are quite relevant in the backdrop of the facts of the cases which I am dealing with. It is held that in order to prove an offence under Section 328 of IPC, it is essential for the prosecution to prove that the accused was directly responsible for administering poisonous substance or causing it to be taken by any person through another and it is further clarified that the accused may accomplish the act by himself or by means of another and in either of those situations, direct, reliable and cogent evidence is necessary and in the backdrop of this proposition the Apex Court examined whether A-1 had any role to play in directly administering or causing to be taken the poisonous liquor by the deceased who had purchased and consumed liquor from a retail shop.

15] In the said case, the conviction of A-1 under Section 328 was set aside since the prosecution was not able to prove that it was he, who administered said liquor to the deceased or he caused it to be consumed by the deceased. In the said case, the prosecution case was that liquor

was sold out from Punala Depot wherefrom the adulterated sample was taken. The adulterated liquor was sold out at the said depot by A-1 and, therefore, his conviction under the Abkari Act came to be maintained.

16] What I would like to emphasize is that, the ratio laid down under the aforesaid judgment must be borne in mind in proper perspective while appreciating the cases in hand. There are judgments of this court, namely, in the matter of *Anand Chaurasiya and another Vs. State of Maharashtra, (2019) SCC online Bombay 1857, Nilesh Narayan Sanghvi Vs. State of Maharashtra Criminal Application (APL) No. 442 of 2020 dated 9.9.2020, and Ganesh Pandurang Jadhav vs. State of Maharashtra (Criminal Writ Petition No. 1027 of 2015 decided on 15.10.2020)* wherein the FIRs were sought to be quashed under Section 482 of the Cr.P.C. It may be noted here that this court in the case of *Anand Chaurasiya (supra)* followed the ratio laid down in the matter of *Joseph Kurian Philip Jose Vs. State of Kerala (1994)6 SCC 535*. However, during the course of submissions, it is submitted by learned APP that both these judgments, namely, in the matter of *Anand Chaurasiya* and *Ganesh Jadhav (supra)* have been stayed by the Honourable Apex Court and are still pending there.

17] The learned APP also placed reliance on the judgment of the Division Bench of this Court in *Zahir Ibrahim Panza and others Vs. State of Maharashtra (Criminal Application No. 4968 of 2016 with Criminal Application No. 4214 of 2016) and Vasim Zamir Shaikh vs. State of Maharashtra (Coram : T.V. Nalawade and Vibha Kankanwadi JJ) and the judgment of the learned Single Judge of this court in Vinod Ramnath Gupta Vs. State of Maharashtra (Anticipatory Bail Application No. 2451 of 2020) and Sagar Sadashiv Kore Vs. State of Maharashtra (Anticipatory*

Bail Application No. 313 of 2021 dated 8.2.2021) In the last referred judgment, the learned Single Bench of this Court took a view that Section 328 of IPC is very much applicable and, therefore, refused to grant benefit of anticipatory bail, whereas, in earlier two judgments of the Division Bench, wherein, quashment of FIR under Section 328 was sought under Section 482 of Cr.P.C., the applications had been rejected on the similar premise that Section 328 is very much applicable.

18] There is no dispute that judgments in the case of Anand Chaurasiya and Ganesh Jadhav (supra) are stayed by the Honourable Apex Court. However, I may point out that the judgment delivered by the Division Bench of this court in the matter of Nilesh Sanghvi (supra) was not at all referred by the learned Single Judges of this Court.

19] All said and done, the fact remains that the ratio of judgment in the matter of Joseph Kurian vs. State of Kerala (supra) matters most and needs to be appreciated earnestly and in proper perspective.

20] As far as the decision given in M/s. Dhariwal Ltd. and others Vs. State of Maharashtra, on which reliance is placed by the learned APP is concerned, in that case, firstly, the interim relief was claimed on the ground of legality of the statutory order dated 19.7.2012 issued by the Food Safety Commissioner, Maharashtra State in public interest in exercise of powers under Section 30(2)(a) of the FSS Act. The Division Bench of this Court repelled both the contentions and refused to grant interim relief. It may not be out of place to mention here that the Division Bench was hearing the question of interim relief and as also the legality of the notification issued by the Food Safety Commissioner under

the relevant provisions of FSS Act. Here, it is not so. Here, the very invocation of Section 328 is questioned and the applications are being heard finally and not at an interim stage.

21] This brings me back to the requisites of Section 328 of IPC. On closer scrutiny of Section 328, it is obvious for the prosecution to prove that the accused was directly responsible for administering poison etc. or causing it to be taken by any person, through another. Simply stating, the accused may achieve and complete the act by himself or by means of another. It is nowhere alleged that the applicants were primarily responsible for administering poison. It is also not the case that applicants had helped by aid of third person or by involving third person, who had authority to do so, caused it (poisonous substance) to be used by others. It would be premature to say that act of storage or transporting, as is alleged against the applicants, should be construed as fulfilling the requisites of Section 328 of IPC. There is need to guard against this hard-headed view, which is canvassed by the learned APP, on a sheer contemplation that the act of applicants would tantamount to an act of “administering” or “causing to be taken”. The ratio laid down in the case of *Joseph Kurian (supra)* is all pervasive qua the cases in hand and applies with full rigour.

22] So far as Anticipatory Bail Application No. 1002 of 2021 is concerned, wherein the applicant was charged with offence under Section 307 of IPC as well alongwith other offences, perusal of FIR therein would reveal that ingredients of Section 307 prima facie are not attracted.

23] Taking note of all the above aspects, in my considered opinion, the applicants have made out a case for consideration and, therefore, I am inclined to exercise discretion in their favour. Hence, the following order :-

:- ORDER :-

[I] The applications are allowed.

[II] In the event of arrest of the applicant/s in connection with respective Crime Numbers registered with respective Police Stations for the offences punishable under respective Sections of IPC and Food Safety Standards Act, 2006, as mentioned in the chart annexed at “Annexure A” to this order, the applicant/s be enlarged on bail on their furnishing PR Bond in the sum of Rs. 20,000/- each, with one or two sureties in the like amount.

[II] The applicant/s shall attend the concerned police station as and when called and shall cooperate with the police in the investigation.

[III] The applicant/s shall not tamper with the evidence.

The applications stand disposed of in aforesaid terms.

**[V.G. BISHT]
JUDGE.**

Encl. Annexure A.

P.T.O....

ANNEXURE A					
Sr. No.	Anticipatory Bail Application No.	Name Of Applicant/s	Crime No.	Police Station	Under Sections
1	944/2020	Munjabhau Manchakrao Rokade	180/2020	Palam Police Station Dist. Parbhani	188,272,273,328 of IPC
2	1168/2020	Shubham Ramanlal Bhalgat	268/2020	Ashti Police Station, Dist. Beed	328, 188, 272, 273 of IPC
3	1183/2020	Parvej Rashid Pathan	248/2020	Waluj Police Station, Dist. Aurangabad	188, 272, 273, 328, 34 of IPC and Sec. 59 of Food Safety & Standards Act, 2006
4	1184/2020	Allah Baksh Shaikh Moulana	67/2020	Omerga Police Station, Dist. Osmanabad	328, 188, 272, 273, 188 of IPC and 26(2)(i), 26(2)(iv), 27(2)(e), 30(2)(a) r/w 2,3,4 of Food Safety & Standards Act, 2006
5	1205/2020	Chetan Kantilal Sabadra	598/2020	City Chowk Police Station, Dist. Aurangabad	328, 272, 273 of IPC and Sec.59 of Food Safety & Standards Act, 2006
6	44/2021	Shaikh Amer Shaikh Baba	414/2020	MIDC Cidco Police Station, Dist. Aurangabad	188, 272, 273, 328 of IPC and Sec. 59 of Food Safety & Standards Act, 2006
7	50/2021	Shivam Digambar Niras	490/2020	Gangakhed Police Station, Dist. Parbhani	188, 328, 272, 273, of IPC and Sec. 59 of Food Safety & Standards Act, 2006
8	81/2021	Anis Patel Majid Patel	15/2020	Khultabad Police Station, Dist. Aurangabad	328 of IPC
9	102/2021	Somnath Shankarappa Aagre	162/2019	Tadkalas Police Station, Dist. Parbhani	188, 328, 272, 273, 34 of IPC and 26(2)(iv), 27(3)(D),

					27(3)(E), 30(2)(a), 59 of Food Safety & Standards Act, 2006
10	237/2021	Sachin Shivajirao Londhe	51/2021	Anandnagar Police Station, Dist. Osmanabad	188, 272, 273, 328 of IPC and 26(2)(i), 26(2)(iv), 27(2)(e), 30(2)(a), 59, 3 of Food Safety & Standards Act, 2006
11	239/2021	Syed Samsher Syed Zahir	46/2021	Pathari Police Station, Dist. Parbhani	328, 188, 269, 271, 272, 273 of IPC
12	269/2021 with 316/2021	1) Akshay Ganesh Idhate 1) Ganesh Ashok Haadade	97/2021	Pathardi Police Station, Dist. Ahmednagar	328, 188 of IPC
13	285/2021	Vijaykumar Dhondiram Tapdiya	414/2020	Hingoli Rural Police Station, Dist. Hingoli	328, 272, 273, 188, 34 of IPC and 26(2)(iv), 27(3)(d), 27(3)(e), 30(2)(a), 59 of Food Safety & Standards Act, 2006
14	290/2021	Maharudra @ Aaba Narayan Mule	15/2021	Peth Beed Police Station, Dist. Beed	188, 201, 272, 273, 328, 353, 332 of IPC
15	292/2021	Anaveerappa Gurupadappa Tengale	49/2021	Tuljapur Police Station, Dist. Osmanabad	188, 272, 273, 328 of IPC and 26(2)(i), 26(2)(iv), 27(2)(e), 30(2)(a) of Food Safety & Standards Act, 2006
16	301/2021	Syed Sattar Syed Babu	92/2021	Shivajinagar Police Station, Dist. Nanded	328, 272, 273, 188 of IPC and 26(2)(iv), 30(2)(a), 27(2)(e), 59(iv) of Food Safety & Standards Act, 2006

17	344/2021	Ashok Sahebrao Sakrate	51/2021	Majalgaon City Police Station, Dist. Beed	188, 328, 272, 273 of IPC and 26(2), 27, 30 and 59 of Food Safety & Standards Act, 2006
18	394/2021	Laxman @ Lakhan Devidas Rathod	174/2021	Topkhana Police Station, Dist. Ahmednagar	328, 272, 273, 188, 269, 34 of IPC and 5 of COPTA Act, 2003
19	403/2021	Ketan Lalit Gandhi	114/2021	Parner Police Station, Dist. Ahmednagar	179, 188, 273, 328 of IPC and 26(2)(i), 26(2)(iv), 27(3)(e), 59 of Food Safety & Standards Act, 2006
20	416/2021	Vachit S/o Ramkishan Pawar	93/2021	MIDC Waluj Police Station, Dist. Aurangabad	188, 273, 328, 272 of IPC and 59 of Food Safety & Standards Act, 2006
21	434/2021	Madhav Ramchandra Navle	62/2021	Pathari Police Station, Dist. Parbhani	272, 273, 188, 328 of IPC and 26(2), 27, 30(2)(a) and 59(6) of Food Safety & Standards Act, 2006
22	436/2021	Mujeeb Musa Shaikh	116/2021	Sevgaon Police Station, Dist. Ahmednagar	188, 272, 273, 328 of IPC and 26(2)(iv), 30(2)(a), 27(2)(e), 27(3)(a), 27(3)(e), 3(1)(zz), 59 of Food Safety & Standards Act, 2006
23	437/2021	Mohammed Asif Mohammed Ishaque	745/2020	Nanalpeth Police Station, Dist. Parbhani	328, 272, 273, 188 of IPC
24	498/2021	Sagar Shamrao Mane	101/2021	Hingoli Urban Police Station, Dist. Hingoli	188, 272, 273, 328 of IPC

25	522/2021	Anil Bhausaheb Bhojane and Anr.	117/2021	Chikalthana Police Station, Dist. Aurangabad	272, 273, 188, 328, 34 of IPC and 26(1), 26, 26(2)(iv), 27(2)(e), 30(2)(a) 59 of Food Safety & Standards Act, 2006
26	540/2021	Mujahid Khan Nasib Khan Pathan	138/2021	Basmat Police Station, Dist. Hingoli	328, 272, 273, 188, 34 of IPC
27	594/2021	Mohmad Farid Mohd Zakeria	131/2021	Khultabad Police Station, Dist. Aurangabad	272, 273, 328, 188, 34 of IPC and Sec. 59 of Food Safety & Standards Act, 2006
28	608/2021	Mohmad Ibrahim Mohd Hakimoddin Shaikh	179/2021	Dhule Taluka Police Station, Dist. Dhule	188, 272, 273, 328 of IPC and 26(2)(iv), 30(2)(e) and 59 of Food Safety & Standards Act, 2006
29	666/2021	Sabana Bee Shaikh Mohmad	100/2021	Kotwali Police Station, Dist. Parbhani	328, 272, 273, 188 of IPC
30	687/2021	Ramesh Raghunath Mane	102/2021	Ausa Police Station, Dist. Latur	328, 279, 188, 272, 273 of IPC & 26, 59 Food Safety & Standards Act, 2006 and 184 of the Motor Vehicle Act, 1988
31	749/2021	Pratap Kashinath Wakale	184/2021	Silegaon Police Station, Dist. Aurangabad	328, 272, 188 of IPC and Sec. 59 of Food Safety & Standards Act, 2006
32	796/2021	Barkusing Gorusing Rajput	266/2021	Gangapur Police Station, Dist. Aurangabad	188, 272, 328 of IPC and Sec. 59 of Food Safety & Standards Act, 2006
33	804/2021	1) Sunil Abaji Borse,	325/2021	Upnagar Police	328, 188, 272,

		2) Holaram Jairamdas Ranglani, 3) Kartarsing Narsing Naik		Station, Dist. Nandurbar	273 of IPC and 26(2)(i), 26(2)(iv), 3(1)(zz), 27(3)(d) & (e), 30(2)(a), 59 of Food Safety & Standards Act, 2006
34	831/2021	Amit Mahendra Agrawal	515/2021	Nawapur Police Station, Dist. Nandurbar	328, 188, 272, 273, 34 of IPC and 26(2)(iv), 30(2)(a), 59 of Food Safety & Standards Act, 2006
35	868/2021	Abdul Raheman Abdul Nabi Bhagwan @ Antule	210/2021	Selu Police Station, Dist. Parbhani	328, 272, 273, 34 of IPC
36	875/2021	Gajanan Balasaheb Barakhunde	121/2021	Kotwali Police Station, Dist. Parbhani	328, 272, 273, 188, 34 of IPC
37	886/2021	Ramrao @ Sonu Panchal Sudam Barakhunde	117/2021	Kotwali Police Station, Dist. Parbhani	328, 272, 273, 188, 34 of IPC
38	917/2021	Abdul Wajid Abdul Wahid	43/2021	Purna Police Station, Dist. Parbhani	328, 188, 269, 271, 272, 273, 34 of IPC
39	926/2021	Manik Bapurao Kadam	277/2021	Purna Police Station, Dist. Parbhani	328, 272, 273, 188, 34 of IPC
40	972/2021	Manzoor Ahmed Bashir Ahmed	222/2021	New Mondha Police Station, Dist. Parbhani	328, 272, 273, 188, 34 of IPC
41	990/2021	Saifansab Chandsab Tamboli	211/2021	Nanded Rural Police Station, Dist. Nanded	272, 273, 328, 188, 34 of IPC and 26(2)(iv), 27(2)(e), 30(2)(a), 59(II), 59(IV) of Food Safety & Standards Act, 2006
42	1002/2021	Mohammed Juned Abdul Karim	165/2021	Kotwali Police Station, Dist. Parbhani	307, 353, 328, 279, 272, 273, 188 of IPC
43	1016/2021	1) Omkar Rajesh Channawar 2) Yadav Suryakant	185/2021	Palam Police Station, Dist. Parbhani	328, 188, 272, 273, 34 of IPC

		Chavan			
44	1032/2021	1) Shaikh Gaffar Shaikh Makdum, 2) Altaf Pathan Sardar Pathan	383/2021	Nanalpeth Police Station, Dist. Parbhani	328, 272, 273, 188, 34 of IPC and Sec. 59 of Food Safety & Standards Act, 2006
45	1033/2021	Ashok Sahebrao Sakrate	346/2021	Pathri Police Station, Dist. Parbhani	328, 269, 270, 272, 273, 188, 34 of IPC
46	1036/2021	Ashok Sahebrao Sakrate	347/2021	Pathri Police Station, Dist. Parbhani	328, 269, 270, 272, 273, 188 of IPC
47	1067/2021	Aahad Shaikh Mustak	236/2021	Kannad Police Station, Dist. Aurangabad	188, 273, 328 of IPC and Sec. 59 of Food Safety & Standards Act, 2006
48	1071/2021	Raisoddin Rafiyoddin Momin	348/2021	Pathri Police Station, Dist. Parbhani	328, 269, 270, 272, 273, 188 of IPC
49	1090/2021	Harshal Vijaykumar Patni	162/2021	Jawaharnagar Police Station, Dist. Aurangabad	188, 273, 328, 34 of IPC and Sec. 59 of Food Safety & Standards Act, 2006

[V.G. BISHT]
JUDGE.

grt/-