

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 BAIL APPLICATION NO.1401 OF 2021

SHAIKH TURAB PASHA S/O SHAIKH SATTAR

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.S. Bora, Advocate for applicants

Mrs. V.N. Patil-Jadhav, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 08th DECEMBER, 2021

ORDER :

1 Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973 by both the accused, who have been arrested in connection with Crime No.273/2021 registered on 04.10.2021 with Kotwali Police Station, Tq. & Dist. Parbhani, for the offence punishable under Section 328, 272, 273, 188 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. S.S. Bora for the applicant and learned APP Mr. V.N. Patil-Jadhav for the respondent. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 It has been vehemently submitted on behalf of the applicants that they are falsely implicated in the present crime. They work as labour and driver and they are the only earning members of their family, therefore, their further custody behind the bars is not at all warranted. It is further submitted that there is nothing to be recovered from the applicants. Applicants were arrested on 04.10.2021 and were sent to Magisterial Custody, therefore, it shows that their further custody is not needed for further investigation. Applicants are resident of Parbhani and are ready to cooperate the Investigating Officer and are ready to abide by the conditions imposed by this Court. Both the applicants have no criminal antecedents. It is further submitted that offence under Section 328 is not attracted and other charges are bailable. He, therefore, prayed for releasing them on bail.

4 Per contra, the learned APP strongly opposed the application and supported the reasons given by the learned Additional Sessions Judge. The learned Additional Sessions Judge has rightly rejected the application for regular bail. The learned APP submitted that the physical custody of the applicants is necessary to find out further stock of contraband articles and prayed for rejection of the application.

5 At the outset, it is to be noted that the main allegation contained in the First Information Report is as regards selling of gutkha which was

found in custody of the applicants. Nothing is required to be seized at the instance of applicants. Further, the allegations made in FIR show that the accused persons were found transporting 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 Jadhav 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 Applicants were found possessing gutkha, however, it appears that immediate customer was not present before them when they came to be arrested. C.A. report appears to be not yet received to prove that whatever material was seized from them is gutkha i.e. contraband article. Under such circumstance, application deserves to be allowed. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicants i.e. 1) Shaikh Turab Pasha s/o Shaikh Sattar and 2) Syed Saleem s/o Sayed Malik, who have been arrested in connection with Crime No.273/2021 registered on 04.10.2021 with Kotwali Police Station, Tq. & Dist. Parbhani, for the offence punishable under Section 328, 272, 273, 188 of the Indian Penal Code, 1860, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) each with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

3 The applicants shall not tamper with the evidence of the prosecution nor shall indulge in any criminal activity.

4 They shall attend the Kotwali Police Station, Tq. & Dist. Parbhani, once in a week i.e. on every Sunday between 08.00 a.m. to 11.00 a.m., till filing of charge sheet. So also they should comply with the requirements under paragraph Nos.12 (1) to (6) of Chapter I of Criminal Manual, (whichever are applicable).

5 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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