

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.483 OF 2021

Mohammed Ali Raheman @

MohammedAli Abdul Raheman Shaikh .. Applicant

Vs.

The State Of Maharashtra

.. Respondent

Mr. Ashwin C. Thool a/w. Mr.Anirudhh A. Takalkar, Advocate
for Applicant.

Mr. Y. M. Nakhwa, A.P.P. for the State-Respondent.

CORAM : PRAKASH D. NAIK, J.

DATE : 24th MARCH, 2021

PC.

1. This is an application for pre-arrest bail under Section 438 of Code of Criminal Procedure (for short "Cr.P.C.") in connection with C.R. No.I-26 of 2021 registered with Narpoli Police Station for the offences punishable under Sections 188, 272, 273 and 328 of Indian Penal Code (for short "IPC") and Section 26(2) (iv), Section 30(2), (a) of Food Safety and Standards Act, 2006.

2. The case of the prosecution is that on 15.01.2021 prohibited goods were unloaded from the vehicle in Gala No.2 at Bhiwandi District Thane. The complainant/Food Safety Officer

visited the said place. Assistant Commissioner of Food was present. Inquiry was made with the driver of the vehicle. Search of vehicle and Gala was conducted. Prohibited food items such as H2 premium tobacco 200 packets valued Rs.1,96,000/- and hot premium pan masala 200 packets valued Rs.3,92,000/- were found in the vehicle. Prohibited food items were also found in the Gala No.2 viz. Dilbag plus pan masala/300 packets valued Rs.39,74,400/-, Raj Niwas pan masala/200 packets valued Rs.11,26,400/-, A plus chewing Tobacco/1000 packets valued Rs.21,60,000/-, Raj Niwas pan masala/200 packets valued Rs.08,71,200/-, Goa 1000 (red)/324 packets valued Rs.09,72,000/-, Goa Gutkha (green)/324 packets valued Rs.19,44,000/-, Premium NP No.01 Jafrani Jarda/800 packets valued Rs.4,48,000/- and Manikchand Gutkha/200 boxes valued Rs.54,00,000/-. The total value of all the items worth Rs. 1,74,84,000/-. Articles were transported and stored in the Gala. Samples were obtained. Goods were seized. On further inquiry with the driver it was revealed that the vehicle belonged to Jagmohan Malhotra. He also disclosed that the goods were

transported by transporter Hemkund Roadlines, New Delhi to Mr.Munna Ali. First Information Report (for short "FIR") was registered on 16.01.2021.

3. The applicant preferred an application for anticipatory bail before the Sessions Court at Thane. The said application was rejected vide order dated 05.02.2021. While rejecting the said application, it was observed that huge quantity of prohibited items was seized. Arrested accused Amin Khan disclosed the name of the applicant and informed that as per the directions and orders given by the applicant he carried the goods from Hariyana to Bhiwandi. From the CDR of applicant and the arrested accused Amin Khan, it appear that, throughout the journey Amin Khan was in contact with the applicant through mobile phone. To collect further information as to who procured such contraband articles and how they carried contraband articles to Bhiwandi, custodial interrogation of the applicant is necessary.

4. Learned counsel for the applicant submitted that there is no evidence showing involvement of the applicant in the offence.

The main submission of learned counsel for the applicant is that all the offences, except the offence under Section 328 of IPC, are bailable. Section 328 of IPC is not attracted. The case of the prosecution is that there was storage of prohibited items with huge quantity to sell them. There is no allegations of consumption of prohibited items. To constitute the offence under Section 328 of IPC, the prosecution required to establish that the substance in question is 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.

5. Reliance is placed on the decision of the Supreme Court in the case of **Joseph Kurian Philip Jose Vs. State of Kerala, AIR 1995 SC 4**, judgments of this Court in the case of **Anand Ramdhani Chaurasia & Anr. Vs. State of Maharashtra & Ors.** delivered in Criminal Writ Petition No.3607 of 2019, judgment in the case of **Ganesh Pandurang Jadhao & Ors. Vs. State of Maharashtra & Ors.** delivered in Criminal Writ Petition No.1027

of 2015, and order passed in the case of **Rajesh Vijay Mishra Vs. State of Maharashtra** delivered in Anticipatory Bail Application No. 464 of 2020.

6. It is submitted that the ratio and interpretation laid down by the Apex Court in the decision of Joseph Kurian Philip Jose (supra) is the law of the land, which is binding. Article 141 of the Constitution of India lays down that any judgment/interpretation of the Supreme Court becomes law of the land and is binding on all the Courts. Reliance is placed on the decision of the Supreme Court in the case of **South-Central Railway Employees Co-Op. Credit Society Employees Union Vs. B. Yashodabai** (2015) 2 SCC 727. It is submitted that the law laid down in the case of Joseph Kurian Philip Jose (supra) has not been overruled by any subsequent judgment. The Apex Court in the case of **C.N. Rudramurthy Vs. K. Barkathullu Khan** (JT 1998 7 SC 110) has held that it is not open to the High Court to take any other view once Supreme Court has taken a view. In the same context learned counsel for the applicant also relied upon the decision of the Supreme Court in the case of

Himangni Enterprises Vs. Kamaljeet Singh Ahluwalia (2017) 10 SCC 706.

7. It is submitted that the ratio and interpretation laid down in the judgment of Anand Ramdhani Chaurasia (supra) and Ganesh Jadhao (supra) is good law and is binding precedent. Both the judgments were delivered by the Division Bench of this Court and it was not open to this Court to decide the correctness or express a view otherwise. Reliance is placed on the decision of the Supreme Court in the case of **Union of India Vs. Raghubir Singh** (1989) 2 SCC 754.

8. Although, the decision in the case of Anand Ramdhani Chaurasia (supra) is stayed by the Apex Court, the decision still holds the field and required to be followed as a binding precedent. It is submitted that Apex Court in the case of **Shree Chamundi Mopeds Ltd. Vs. Church or South India Trust Association CSI Cinod Secretariat, Madras** (1992) 3 SCC 1, has observed that the order which has been stayed only cease to operate from the passing of stay order and would not wipe

out its existence which continues to exist in law. The aforesaid decision has been clarified by this Court in the case of **Chhaya and others Vs. The Committee for Scrutiny and Verification of Tribe Claims & Ors.** (2018) 6 Bom CR 492, in which it was observed that the stay by the Supreme Court does not mean that such a law laid down in the judgment ceases to apply. The effect of order of stay in pending appeal before the Apex Court does not amount to any declaration of law but is only upon the parties to the said proceedings and such interim order does not destroy the binding effects of the judgment of the High Court as a precedent because while granting interim order the Apex Court had no occasion to lay down any proposition of law consistence with the one declared by High Court.

9. Learned counsel for the applicant also relied upon the decision in the case of **Government of Andhra Pradesh & Ors. Vs. P. Gautam Kumar & Ors.** (2012) 6 ALD 458, decided by High Court of Andhra Pradesh and decision in the case of **Palaniswamy & Ors. Vs. State of Andhra Pradesh & Ors.** (2018) 3 ALD 181. It is further submitted that this Court in the

case of Rajesh Vijay Mishra Vs. State of Maharashtra (supra) had allowed the application for anticipatory bail for similar offence vide order dated 17.08.2020 by relying upon the decision of this Court in the case of **Anand Ramdhani Chaurasia Vs. State of Maharashtra** (supra).

10. Learned counsel further submitted that the judgment of this Court in the case of **Vinod Ramnath Gupta Vs. State of Maharashtra** delivered in Anticipatory Bail Stamp No.2451 of 2020 is *per incuriam*. It is in contradiction to the judgment of the Supreme Court in the case of Joseph Kurian Philip Jose (supra). The judgment in the case of Vinod Ramnath Gupta (supra) does not differentiate or lay down any reasons for not dealing with the judgment in the case of Joseph Kurian Philip Jose (supra), Ganesh Jadhao (supra) and Rajesh Mishra (supra). The judgment in the case of Vinod Gupta (supra) is *per incuriam* and does not follow mandate of Article 141 as well as ratio laid down in Shree Chamundi Mopeds Ltd.(supra) and other decisions referred to hereinabove. In the decision of this Court in the case of **Sagar Sadashiv Kore Vs. State of**

Maharashtra delivered in Anticipatory Bail Application No. 313 of 2021, it is observed that judgment of this Court in the case of **Vasim Shaikh Vs. State of Maharashtra** delivered in Criminal Application No.4353 of 2016 stands revived. However, the Court has not considered that the judgment of Vasim Shaikh (supra) does not refer/rely upon the interpretation laid down by the Apex Court in the case of Joseph Kurian Philip Jose (supra). The decision in the case of Sagar Kore is *per incuriam*. It is contrary to the law laid down in the case of Shree Chamundi Mopeds Ltd. (supra) and **Sandeep Bafna Vs. State of Maharashtra** AIR (2014) SC 1745. Reliance is also placed on the decision of this Court in the case of **Deepak Satyavan Kudalkar Vs. State of Maharashtra** delivered in Criminal Bail Application No. 197 of 2020.

11. Learned APP submitted that the offence is of serious nature. Huge quantity of prohibited contraband was recovered. The prohibited items were injurious to health. The involvement of the applicant is disclosed during the investigation. Section 328 of IPC is attracted in this Case. He relied upon the decision

in the case of Vinod Ramnath Gupta (supra) and Sagar Kore (supra). In the light of the observations of this Court in the said decisions, this application may be rejected.

12. On perusal of the FIR, it is apparent that huge quantity for prohibited items was seized. the FIR was registered for aforesaid offences. The investigating agency has collected evidence which discloses the complicity of the applicant in the crime.

13. The primary contention of the learned counsel for the applicant is that Section 328 of IPC is not attracted. He has relied upon the decisions referred to hereinabove. It is contended that the law laid down by the Apex Court in the case of Joseph Kurian Philip Jose (supra) is binding on all the High Courts.

14. The Apex Court in the case of Joseph Kurian (supra) was adjudicating criminal appeals arising out of judgment of the High Court delivered in appeals against the conviction. The accused therein were convicted for the offence under Sections 272 and 328 of IPC. They were convicted for the offences

punishable under Section 55 (a) and 55 (i) of the Abkari Act and appellants were sentenced to imprisonment. Apparently, trial was held and evidence was recorded. Trial Court appreciated the evidence and convicted the accused. The judgment of the High Court confirming the order of conviction was challenged before the Apex Court. The factual matrix of the said decision relates to the consumption of poisonous arrack, ethyl alcohol adulterated with methyl alcohol. Some of the victims had sustained injuries and certain persons died. The Apex Court has observed that in order to prove offence under Section 328 of IPC, 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. Direct, reliable and cogent evidence is necessary. The Court considered the question whether the appellant No.1 had any role to play in directly administering poison or causing to be taken the poisonous liquor by the deceased, who had purchased and consumed liquor from retail shop, with intent to cause hurt to him or knowing it to be likely that it would cause hurt to him. The Court delivered the decision in the fact of the case and while appreciating the evidence adduced before Trial Court.

15. Criminal Writ Petition No.1027 of 2015 preferred by Ganesh Pandurang Jadhao (supra) and other Writ Petitions and Criminal Applications were disposed of by Division Bench of this Court, (Aurangabad Bench) vide Judgment and order dated 4th March 2016 (Coram:- A.V. Nirgude and I.K. Jain, JJ.). The petitions/applications were allowed. The action initiated against petitioners/applicants was declared illegal and complaints/reports were quashed. The said Judgment and

order was challenged by State of Maharashtra before Apex Court. By order dated 20.09.2018, Apex Court set aside the finding of High Court and matters were remitted back to High Court for considering contentions afresh which were not argued before High Court.

16. The Division Bench of this Court (Aurangabad Bench) in the case of **Vasim Jamil Shaikh Vs. State of Maharashtra** (Coram:- T. V. Nalawade and Smt. Vibha Kankanwadi, JJ.) (Criminal Application No.4353 of 2016 with Criminal Application No.4354 of 2016) held that the contention that the provision of Section 328 of IPC cannot be used in that case is not acceptable. This provision shows that, whoever administers to or causes to be taken by any person which is likely to cause hurt then he can be punished under provision of Section 328 of IPC. Specific person to whom the thing is administered or the specific incident in which it was caused to be taken need not be mentioned in the case like present one. The persons who are indulging into illegal activity like possessing and selling the substances which are likely to cause hurt are covered by the

provisions of Section 328 of IPC. The contention of applicants in the said proceedings was that, even if it is presumed that the applicants were found in possession of prohibited articles and they were in huge quantity, the provisions of Section 272, 273 and 328 of IPC cannot be used. It cannot be inferred on the basis of prohibition for manufacture, possession and sale of articles, they are injurious to health as mentioned in the above provisions of IPC. Reliance was placed on observations made in Judgment dated 04.03.2016 delivered in Criminal Writ Petition No.1027 of 2015 (Ganesh Pandurang Jadhao and Anr. Vs. State of Maharashtra and Ors.) which was set aside subsequently by Apex Court. The prosecution relied upon order dated 15.09.2012 passed by this Court in Writ Petition No.1631 of 2012 (M/s. **Dhariwal Industries Ltd. Vs. State of Maharashtra**). The said decision was not referred in the case of Ganesh Pandurang Jadhao (supra). The Court referred to decision of this Court in the case of **Sanket Foods Products Pvt.Ltd. Vs. Union of India** dated 23.11.2011 (Writ Petition No.3398 of 2011). The Court had considered bad effects of the

components of Gutkha, Pan Masala on health. Reference is made to decision of this Court in Writ Petition No.830 of 2016 (Umrao Singh Vs. State of Maharashtra and Ors.) decided on 10.01.2017. Applicability of Section 328 of IPC was considered. It was held that, these substances contain nicotine and magnesium carbonate and they can take life. The Court considered ingredients of provisions of Section 328 of IPC i.e. (i) causes to be taken by any person unwholesome drug (ii) knowing it to be likely that, he will thereby cause hurt. Court also referred to decision in the case of Zahir Ibrahim Panja and Ors. Vs. State of Maharashtra (Criminal Application No.4968 of 2016), decided on 16.10.2018, wherein applicability of Sections 273 and 328 of IPC and also provisions of the Act when such articles were found in possession in Maharashtra. The Court also referred to decision in the case of **State of Maharashtra and Ors. Vs. Sayyed Hasan and Ors.** (Criminal Application No.1195 of 2018) decided on 20.09.2018. In that decision Court had considered provisions of Special Enactment, IPC and Section 26 of General Clauses Act and observed that there is no

Specific bar to register crime under IPC even if provisions of Special Enactment are attracted. The Court held that ratio in the case of Ganesh Jadhao (supra) cannot be used in favour of applicants therein and no relief can be granted to them.

17. This Court in the case of Anand Ramdhani Chaurasia, (supra) has dealt with the similar issue. The Division Bench of this Court relied upon the decision of the Apex Court in the case of Joseph Kurian (supra), it was held that Section 328 of IPC is not attracted. It was also observed that the Division Bench of this Court in the case of Vasim Shaikh (supra) has not considered the judgment of the Apex Court in the case of Joseph Kurian (supra) and it is *per incuriam*. The decision of this Court in the case of Anand Chaurasia was challenged before the Apex Court vide Special Leave Petition (Criminal) No.8224 of 2020. On 31.08.2020, the Apex Court passed the following order:-

“Delay condoned.

Issued notice.

Until further orders, there shall be a stay of operation of the impugned judgment and order passed by the High Court of Judicature at Bombay.”

18. Criminal Writ Petition No.1027 of 2015 preferred by Ganesh Pandurang Jadhao and other connected matters. Which were remitted for fresh hearing was heard by the Division Bench (Aurangabad Bench). The said petition was decided vide order dated 15.10.2020. Court referred to decision of this Court in the case of Anand Ramdhani Chaurasia and concurred with the view expressed in the said Judgment and order dated 13.09.2019, on the issue of applicability of Section 328 of IPC. After pronouncement of judgment, it was pointed out to the Court that the decision in the case of Anand Chaurasia (supra) has been challenged before the Apex Court and interim order has been passed by the Apex Court. Hence, the Division Bench stayed the said order for a period of six weeks. The said decision dated 15.10.2020 in the case of Ganesh Jadhao & Ors. (supra) was challenged before the Apex Court by the State of Maharashtra. The Apex Court passed the following order on 07.01.2021: -

“Issue Notice.

Until further orders, there shall be a stay of operation of the impugned judgment(s) and order(s) passed by the High Court. Tag with SLP (Cri.) Diary

No. 8224/2020”

19. LDVC ABA No.464 of 2020 preferred by Rajesh Vijay Mishra was allowed vide order dated 17.08.2020. The issue was Section 328 of IPC is not applicable. The learned Judge relied on decision in the case of Anand Chaurasia (supra) it was observed that Division Bench Judgment to which learned Judge was a member has dealt with ingredients of Section 328 of IPC and the terms administer and ‘causes’ mere transportation or possession of the Substances would not attract Section 328 of IPC unless there is something more than causing a person to consume substance or directly administering. The decision in Anand Chaurasia (Supra) was thereafter stayed by Supreme Court on 31.08.2020.

20. Learned Single Judge of this Court dealt with the issue about the applicability of Section 328 of IPC in the case of Vinod Ramnath Gupta (supra). The contention of the applicants in the said application was that offences punishable under Sections 188, 272 and 273 of IPC are bailable and so far as offence under Section 328 of the IPC is concerned, the Division Bench of this

Court in the case of Anand Chaurasia (supra) has held that mere storage of prohibited food articles without any further action and on contemplation that it would be sold in the market, brought by a person from the market and consumed by him is too far fetch consequence of an act of administering or causing to be taken. The applicants had also relied upon another judgment of the Division Bench in the case of Ganesh Jadhao & Ors. (supra). This Court in the aforesaid case of Vinod Gupta vide order dated 06.11.2020 had taken into consideration the decisions delivered in the case of Anand Chaurasia (supra) and Ganesh Jadhao (supra). It was observed that in the case of Anand Chaurasia, FIR was registered on the basis of complaint received from Food Safety Officer recording that search of residence and warehouse of the petitioner resulted in recovery of *Gutkha and Pan Masala* and the storage contravened the notification dated 28.07.2020 issued by the Food Safety Commissioner. Accused were arrested and released on bail. Petitioners therein had challenged the action initiated against them by registering the FIR. The judgment in the case of Anand

Chaurasia (supra) has been stayed by the Apex Court. The judgment in the case of Ganesh Jadhao (supra) was stayed by same bench for a period of six weeks. Considerations for quashing FIR/complaint under Article 226 of the Constitution of India and under Section 482 of Cr.P.C., being different, cannot be applied in pre-arrest bail proceeding. Section 328 of IPC is attracted where the substance in question is poison or any stupefying, intoxicating or unwholesome drug or other thing is administered or caused to be taken by any person with an intent to cause hurt or with an intent to commit or to facilitate the commission of an offence or intent it to be likely that he will thereby cause hurt, becomes punishable under the provision. The first part of Section 328 contemplates a direct involvement of person and second part suggest any indirect method for causing one of the substances to be taken by any person. Expression “causing” involves some action. “Causation” means the action of causing something. “Intervening causation” means an event that comes between the initial event in sequence and the end result. Manufacturing “unsafe food” is initial event.

Causing its movement by transporting or storing it with an intent to reach to end user are the events in sequence caused by active participation of intermediate agencies or persons. Thus, all such events involving active participation of persons at each stage, is relevant. A person at end is a 'consumer' to whom "unsafe food" is sold, knowing well that its consummation would cause hurt to him. Persons involved in manufacturing "unsafe food", causing its movement to market or storing it with intent to sell it, either himself or through other persons, while prohibitory 'order' promulgated under Section 30 of the Food and Safety Act is in force and such all persons, under express or implied authority either individually or otherwise, "causes person to take" unsafe food with intent to cause hurt. It is indirect causation. It was further observed that the manufacturing unsafe food articles, moving these goods from manufacturing unit to market for its sale is an event and that any action in chain of circumstances which foreseeably leads to and facilitates the sale of food articles is further event may be said to be a cause of that event to bring the action within the

expression' "causes to be taken by a person", any poison with intent to cause hurt to such person, in Section 328 of the IPC. The offence under Section 328 of IPC, essentially is not causing someone else to do prohibited act but 'causing' a person to consume food articles knowing well that its consumption would hurt such person. Even otherwise, where the investigation is at initial stage, and the relevant material is yet to be collected; it may not be appropriate to hold that FIR does not make out an offence under Section 328 of IPC. The said application was rejected.

21. In the case of Sagar Sadashiv Kore (supra) decided on 08.02.2021 the same ground was urged again with additional contention that stay of operation of the judgments in the case of Anand Chaurasia (supra) and Ganesh Jadhao (supra) does not mean that those judgments do not exist and therefore the ratio is not applicable. The applicant was seeking anticipatory bail on the ground that except offence under Section 328 of IPC, all other offences are bailable. Section 328 of IPC is not attracted. The advocate for applicant had also relied upon the decision of

the Supreme Court in the case of Shree Chamundi Mopeds Ltd. (supra). The application was rejected by order dated 08.02.2021. It was observed that the judgment in the case of Anand Chaurasia (supra) as well as Ganesh Jadhao (supra) were stayed by Supreme Court. The Court relied on the decision of this Court in the case of Vinod Ramnath Gupta (supra). Since the Judgment in the case of Anand Chaurasia is stayed the ratio laid down in Vasim Shaikh's case stands revived. In the case of Vasim J. Shaikh (supra), the Court had relied upon the order passed in **Zahir Ibrahim Panja & Ors. Vs. State of Maharashtra & Anr.** (Criminal Application No.4986 of 2016). It is observed that reference was made in that judgment to the purpose of issuing orders of prohibition. State Government had considered research material of Tata Memorial, Tata Institute of Fundamental Research and other institutes. It was observed that it was scientifically established that areca nut chewing has been classified as carcinogenic to humans. Tobacco and such food, substance cause cardiac arrest, oral cancer, esophageal cancer, stomach cancer and other diseases. They cause

diseases of various internal organs and glands. The Division Bench in Vasim's case had observed that Section 328 of IPC is applicable in such cases. Court also noted the fact that Vasim's case (supra) was cited before the Division Bench in Anand Chaurasia's (supra) case and it was held that the decision in Vasim's case (supra) was *per incuriam*. Now the Supreme Court has stayed the operation of the judgment and order in Anand Chaurasia's (supra) case and thus, the ratio laid down in Vasim Shaikh's (supra) case stands revived. Learned advocate appearing for the applicant therein had submitted that stay of operation of judgment passed in Anand Chaurasia's case (supra) and Ganesh Jadhao's case (supra) does not mean that those judgments do not exist. The Court considered the said submissions and the ratio laid down in Shree Chamundi Mopes Ltd. (supra). This Court rejected the contention of the counsel for the applicant and observed that the judgment in Shree Chamundi Mopes Ltd. (supra), itself clarifies that stay of operation of order means that the order which has been stayed would not be operative from the date of passing of the stay order.

This sufficiently clarifies the position. The Apex Court stayed operation of judgment and order in Anand Chaurasia's case. The operation of Anand Chaurasia's judgment was stayed on 31.08.2020. The incident in question in that case is dated 07.01.2021 thus, operation of Anand Chaurasia Judgment was stayed on that particular date. Hence, Anand Chaurasia's case does not operate. It was specifically observed that there shall be a stay of operation of the impugned judgment and order passed in Anand Chaurasia's case (supra).

22. It is pertinent to note that the judgment of the Apex Court in the Case of Joseph Kurian (supra) was referred to by Division Bench of this Court in Anand Chaurasia's case (supra). The judgment in the case of Anand Chaurasia (supra) has been stayed by the Apex Court. The case of Ganesh Jadhao was initially heard by Division Bench of this Court at Aurangabad Bench and the said petition was allowed. The decision was challenged before the Apex Court. The order is set aside and the matter was remanded back to the High Court by the Apex Court. Thereafter, it was again heard by Division Bench of this

Court at Aurangabad Bench and the petition was allowed. However, since it was pointed out that on the date of pronouncement of judgment, the judgment in the case of Anand Chaurasia (supra) has been stayed by the Apex Court. The decision in the case of Ganesh Jadhao (supra) was stayed by the Division Bench for a period of six weeks and subsequently which has been stayed by the Apex Court.

23. Contention of the learned counsel for the applicant that the decisions delivered by the learned Single Judge of this Court in the case of Vinod Gupta (supra) and Sagar Kore (supra) are *per incuriam*, cannot be accepted. I am in agreement with the view expressed by the Division Bench of this Court in the case of Vasim Shaikh Vs. State of Maharashtra (supra), the decisions of the learned Single Judge of this Court in the case of Vinod Gupta (supra) and Sagar Kore (supra). There is no record to show that the decision in the case of Vinod Gupta (supra), Vasim Shaikh (supra) and Sagar Kore (supra) set aside or under challenge. The decision in the case of Joseph Kurian (supra) was delivered in different context. The Court had appreciated

the evidence and for want of evidence and in the light of the fact of the case the observations were made with regard to applicability of Section 328 of IPC. This Court is dealing with the application for anticipatory bail. The investigation is in progress. At this stage, no such finding can be given that Section 328 of IPC is not applicable.

24. The decision in the case of **Shree Chamundi Mopeds Ltd (surpa), Chhaya and others Vs. The Committee for Scrutiny and Verification of Tribal Claims** (supra), **Government of Andhra Pradesh and Ors. Vs. P. Gautam Kumar and Ors.** 2012 (6) ALD 458; **Palaniniswamy and Ors. Vs. State of Andhra Pradesh and Ors.** 2018 (3) ALD 181; **State of Andhra Pradesh and Ors. Vs. Datla Krishna Varma and Ors.** 2018 (3) ALD 582; **Koduru Venka Reddy Vs. The Land Acquisition Officer** (1994) 1 ALT 227 relates to effect of stay granted by higher Court. Whereas the decisions in **Sundeep Bafna Vs. State of Maharashtra** (supra); **South Central Railway Employees Cooperative Credit Society Employees Union Vs.**

B. Yashodabai and Ors. (2015) 2 SCC 727; **Himangni Enterprises Vs. Kamaljeet Singh Ahluwalia** (2017) 10 SCC 706; **Union of India Vs. Raghubir Singh** (1989) 2 SCC 754 and **C.N. Rudramurthy Vs. K. Barkathulla Khan** JT 1998 (7) SC 110 relates to binding effect of precedents. There cannot be two opinions about the law laid down in the said decisions. The submission of counsel for applicant revolve in the ratio of Apex Court decision in the case of Joseph Kurian (supra) which was relied upon by Division Bench of this Court in the case of Anand Ramdhani Chaurasia (supra). Another Division Bench in the case of Ganesh Pandurang Jadhao in recent order had relied on the judgment in Anand Charasia's case. Both decisions are stayed by Apex Court. As observed hereinabove, the decision of Joseph Kurian was delivered in facts of that case and in different context which deciding judgment of conviction. Hence, the decisions relied by applicant cannot be applicable to present case.

25. Considering the factual aspects of this case, I am of the considered opinion that Section 328 of IPC is attracted in this

case. There is material on record to show involvement of the applicant in the offence. Hence no case for grant of anticipatory bail is made out:-

ORDER

- (i) Anticipatory Bail Application No.483 of 2021 is rejected.
- (ii) Application stands disposed of.

(PRAKASH D. NAIK, J.)