

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1018 OF 2020

Shabbir Najab Khan

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Amin Solkar, Advocate for the Applicant.

Mr. Y. M. Nakhwa, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 18th FEBRUARY, 2021.

PC :

1. The applicant is apprehending arrest in connection with C.R. No.I-698 of 2020, registered with Kashimira Police Station, for the offences punishable under Sections 328, 188, 272, 273 r/w. 34 of Indian Penal Code, 1860 ("IPC" for short) and Sections 26(2) (ii), 26(2) (iv) of Food Safety Standard Act, 2006 and Maharashtra Covid Treatment Rule 11.

2. The case of the prosecution is that, on 9th September, 2020 during patrolling duty, the complainant received information that vehicle containing tobacco and gutaka will be passing from Versova police outpost. PSI-Gaikwad and his team went to Versova village road. One Eicher container bearing No. MH-02-ER-8749 was

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passing through the road. Police stopped the vehicle and made enquiry with driver and cleaner. They informed that they are carrying consignment of sarees in the container. On inspection, boxes containing sarees were noticed. On further inspection, bags containing gutaka were noticed. After enquiry with a driver about contents of container, he stated that goods were being transported from Surat, Gujarat to Bandra, Mumbai. Police seized the container. FIR was registered.

3. The applicant preferred an application for anticipatory bail before the Court of Sessions, which was rejected by Order dated 9th October, 2020.

4. Learned counsel for the applicant submitted that the applicant has been falsely implicated in this case. There is nothing to be recovered from the applicant. He had allegedly transported all the articles, seized by the police. The applicant is not named in the FIR. He has been implicated on the basis of statement of co-accused. He was merely the owner of the truck. He has cooperated with the investigation. Driver and cleaner were arrested on 10th September, 2020. They were produced before the concerned Court for remand. They were remanded to police custody for sometime and thereafter to judicial custody. They were granted bail by the Court of learned

Judicial Magistrate, Thane.

5. Learned APP submitted that the applicant's involvement is supported by evidence. The applicant is in the business of transport and he is also owner of the vehicle. The arrested accused were working as a driver. Cleaner on the vehicle had disclosed involvement of the applicant. They have stated that goods were loaded as per directions of the applicant and he knows the source of goods. The applicant is prime accused. His custodial interrogation is necessary.

6. Learned APP relied upon the decision of this Court in the case of *Vinod Ramnath Gupta V/s. State of Maharashtra* dated 6th November, 2020 and submitted that this Court has held that Section 328 of IPC is attracted in such cases and application was rejected. He also pointed out that investigation papers and the documents which shows that the vehicle used in the crime is in the name of applicant.

7. The prosecution case is that, on receipt of information, the container with the goods as stated above, was intercepted. Driver and the cleaner were arrested. They tried to mislead investigating agency. However, on further interrogation gutka and tobacco was found. The value of goods was Rs.18,06,400/-. The documents shows that the vehicle is owned by the applicant. The interrogation

of the co-accused is revealed that the goods were loaded and were being transported on instruction of the applicant. Thus, the involvement of the applicant, is disclosed in the case. Hence, no case is made out for grant of anticipatory bail.

8. Hence, I pass the following order.

ORDER

- (i) Anticipatory Bail Application No.1018 of 2020, is rejected and disposed of accordingly.
- (ii) This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)