

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.2236 OF 2021

Mohammad Ali Raheman @ Mohammad
Ali Abdul Raheman Shaikh

Applicant

Versus

The State of Maharashtra

Respondent

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Mr. Hare Krishna Mishra, Advocate for the applicant.
Mr. S.R. Agartkar, A.P.P. for the respondent – State.

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CORAM : **PRAKASH D. NAIK, J.**

DATE : 17th September, 2021.

ORDER :

1. This is a second application for anticipatory bail in CR No.26/2021 registered with Narpoli Police Station, for the offences punishable under Sections 188, 272, 273 and 328 of the Indian Penal Code (for short, "IPC") read with Sections 26 (2) (iv), 30 (2) (a) of the Food Safety and Standard 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. Previous application for anticipatory bail preferred by the applicant was rejected by this Court vide order dated 24th March 2021.

4. Learned Counsel for the applicant submitted that sufficient time has elapsed after rejection of earlier anticipatory bail application and the applicant has preferred the present application on some new facts which are not reflected in the order dated 24th March 2021. The applicant has nothing to do with the contents of

the container. By merely causing the goods to be unloaded without having knowledge of what are the goods, cannot be a reason for effecting custodial interrogation of the applicant. The issue as to whether or not storage of tobacco attracts Section 328 of the IPC, is pending before the Apex Court. The co-accused has been granted regular bail by the Sessions Court. This Court and other High Courts have granted protective order of anticipatory bail in similar set of facts involving Section 328 of the IPC. Copies of such orders are annexed to this application. The applicant is entitled to prefer successive application for anticipatory bail. The contention of the applicant is that Section 328 of the IPC is not attracted to this case. It is further submitted that one of the order passed by the High Court of Judicature of Bombay Bench at Nagpur refusing anticipatory bail has been challenged before the Apex Court and vide order dated 7th May 2021 the interim protective has been granted that no coercive action should be taken against the petitioner therein.

5. Successive application can be preferred seeking anticipatory bail. Reliance is placed on the decision of the High Court in the case of ***Lt. Col. Purohit Vs State of Maharashtra, 2018 (11) SCC 458.***

6. Learned Counsel for the applicant has tendered compilation of several judgments in support of his submission that Section 328 of the IPC is not attracted. Reliance is placed on the order passed by this Court in ***Criminal Writ Petition No. 3794 of***

2014 in the case of ***Nilkamal Limited vs. Union of Territory of Dadar and Nagar Haveli***, wherein this Court had referred to the decision in the case of *Chamundi Moped Ltd. vs. Church of South India Trust Association*. Primary contention of the learned Counsel for the applicant is that the issue is pending before the Supreme Court.

7. Learned A.P.P. strongly objected the relief sought in this application. He submitted that the applicant cannot be permitted to prefer successive applications since the previous application was rejected after considering all the submissions, including the issue of applicability of Section 328 of the IPC and the issue relating to judicial precedents. The applicant is absconding.

8. The previous application was rejected by me vide order dated 24th March 2021 by dealing with the various issues raised by the applicant. The F.I.R. has been registered in this case on 16th January 2021. It is apparent that the applicant has been avoiding arrest since then. While adjudicating the previous application, several submissions were advanced with regard to applicability of Section 328 of the IPC., view taken on applicability of Section 328 of the IPC in various decisions and pendency of issue before the Apex Court.

9. Reliance was placed on the decision of the Apex Court in the case of **Joseph Kurian Philip Jose vs. State of Kerala, AIR**

1995 SC 4 and other decisions. It was also contended that the said decision was binding on this Court. On the issue of binding precedents, reliance was placed by the learned Counsel for the applicant on several decisions and after hearing lengthy arguments. The application was rejected by assigning detailed reasons.

10. Considering the aforesaid circumstances, there is no ground for entertaining this application. Hence, the following order.

ORDER

Anticipatory Bail Application No. 2236 of 2021 stands rejected.

(PRAKASH D. NAIK, J.)

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