

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (ABA) NO. 219 OF 2021

(Firoz s/o Siddik Punjani and another ..vs.. State of Maharashtra, through PSO, Karanja PS, District Washim)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.G. Hunge, Counsel for the applicants,
Mr. N.S. Rao, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 26-04-2021

Hearing was conducted through video conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. Heard.

3. The applicants are apprehending arrest in Crime 128/2021 registered with Karanja Police Station, District Washim for offences punishable under Sections 188, 272, 273, 328 read with Section 34 of the Indian Penal Code and Sections 26(2)(i), 26(2)(iv), 30(2)(a) and 59 of the Food Safety and Standards Act.

4. The crime is registered on the basis of report dated 22-2-2021 lodged with the Karanja Police Station, by the Food Safety Officer Mr. Kokadwar.

5. The gist of the report is that secret information was received that prohibited food articles were stored

and transported. Four locations were raided pursuant to the said information. Stock of banned food articles i.e. pan masala (combination of betal leaf and areca nut with or without tobacco) worth Rs.75,258/- (Rupees Seventy Five Thousand Two Hundred Fifty Eight) was recovered from accused Firoz Punjani and stock of similar prohibited food articles worth Rs.27,74,700/- (Rupees Twenty Seven Lac Seventy Four Thousand Seven Hundred) from accused Irfan Akbani. In addition to the prohibited food articles, 400 bundles of plastic presumably used to pack the pan masala were recovered.

6. The learned Counsel would submit that pursuant to the condition imposed while granting interim pre-arrest protection, the applicants have attended the concerned police station and since the prohibited/ banned food articles are seized, custodial interrogation is not necessary. The learned Counsel is relying on order dated 09-2-2021 in Criminal Application (ABA) 40/2021 which protects the applicant from whom the similar prohibited articles worth Rs.39,336/- (Rupees Thirty Nine Thousand Three Hundred Thirty Six) were seized.

7. It is trite law that an order of protection rendered under Section 438 of the Criminal Procedure Code, 1973 can never be a precedent. The sooner the Counsel realises and appreciates the position of law, the better

would be the justice dispensation system, since precious time of the Court will be saved. In any event, in the case cited, what weighed with this Court was that custodial interrogation was not necessary. In the present facts, considering that the value of the seized contraband is more than Rs.27,00,000/- (Rupees Twenty Seven Lac), it is obvious that the accused is not a petty shop keeper or retailer. It is further *prima facie* discernible that the accused are suppliers who sourced the prohibited articles from the neighbouring State. It would be necessary for the Investigating Officer to unearth the entire chain of culpability. The source as well as the beneficiaries and the end users will have to be identified. If the applicants are protected, the entire investigation shall come to a grinding halt.

8. While the applicants may have attended the police station, as is held by the Supreme Court in ***State represented by the C.B.I. v. Anil Sharma, (1997) 7 SCC 187***, interrogation while the accused are protected is not a substitute for custodial interrogation. The quality of elicitation of material is remarkably different in custodial interrogation. Protecting the applicants shall not be fair to the investigating agency which is entitled to arrest and custodially interrogate the applicants in order to unravel all the facets of the crime.

9. The application is dismissed.

JUDGE

adgokar