

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

CRIMINAL APPLICATION (ABA) NO. 469/2021

(Syed Shabbir S/o Syed Mir Vs. State of Maharashtra)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri V. S. Mishra, Advocate for applicant.
Ms. T. H. Udeshi, APP for non-applicant/State.

CORAM : VINAY JOSHI, J.
DATE : 28.09.2021.

Heard.

2. This is an application seeking pre-arrest bail in connection with Crime No. 666/2021 for the offence punishable under Sections 188, 272, 273, 328 of the Indian Penal Code and Sections 26(2)(i), 26(2)(iv), 27(3)(d), 27(3)(e), 30(2)(a) of the Food Safety and Standard Act, 2006 registered with the Police Station, Akot File, Akola.

3. It is the prosecution case that on receipt of secret information, Food Safety Officer has visited the grocery shop of the applicant on 30.06.2021. During search, he found stock of

contraband articles namely sainted 'supari' in the said shop. Those articles were seized which were precisely branded as Keshar Nakhirili Gold Supari, Feelings Chandan Sweet Supari, Feeling Elaichi Supari and Anni Gold Sweet Supari. Upon seizure of those articles, necessary samples were collected and sent to the Public Analyst and, the report.

4. Learned counsel for the applicant by claiming innocence, contended that the Police have already seized the stock of contraband therefore, there is no necessity for custodial interrogation. Further more, it is submitted that the prosecution launched without previous sanction is untenable in view of Section 42(3) of the Food Safety and Standard Act. Besides that, the applicant is willing to cooperate with the Investigating Agency.

5. The State resisted bail by filing reply-affidavit. Besides narrating the prosecution case as stated in First Information Report, it is

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submitted that from the date of seizure, the applicant is absconding. The investigation is at preliminary stage. The custodial interrogation is necessary to find out from where the applicant has procured contraband material and how many persons are involved in the offence. Moreover, it is stated that the contraband material was kept in grocery shop for sale in-contravention with the provisions of the Food Safety and Standard Act.

6. In response to the submission about the maintainability of prosecution, learned APP would submit that the necessary sanction could be obtained before filing of charge-sheet. According to her, sanction is necessary for taking cognizance and not for launching prosecution. The said technical aspect need not be gone into at this preliminary stage when the investigation is in progress and charge-sheet is yet to be filed.

7. Prima facie, it is evident that huge stock of contraband articles namely sainted 'Supari' of

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different brands was seized from the shop i.e. from the possession of applicant. Learned APP has produced Public Analyst Report dated 11.08.2021. The result of examination indicates that samples from all four brands on testing were found to be in contravention with the order No. FSSA/Notification-369/7 dated 15/07/2020 of Commission of Food Safety. Prim facie, said material indicates that seized articles are prohibited one. Moreover, as the articles were stored in grocery shop, it can be legitimately inferred that it is for sale.

8. It is unfortunate to note that despite prevailing ban from a decade, still the large number of cases are emerging about seizure of banned articles. Though the punishment for the offence was made stringent, still in the quest of making quick money, the banned products were freely made available at grass-roots level. Some study report says that these products are injurious to health and amiable to various incurable

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diseases. The alleged offence has close connection with the health of common man. In order to reach to the truth and to unearth the information about the procurement of stock and involvement of other persons, custodial interrogation is necessary.

9. In view of that, it is not a fit case to grant pre-arrest protection. Hence, application stands rejected.

JUDGE

Gohane.