

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.56 OF 2022

Laxmikant S/o Govindlal Pallod

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Rahul D. Khadap Advocate for Applicant.
Mr.A.M. Phule, A.P.P. for Respondent-State.
...

WITH

ANTICIPATORY BAIL APPLICATION NO.18 OF 2022

Abdul Salim S/o Abdul Mannan Saudagar

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.S.R. Bagal Advocate h/f. Mr.B.N. Gadegaonkar
Advocate for Applicant.
Mr.A.M. Phule, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 24th JANUARY, 2022

ORDER :

1. Both the applicants are apprehending their arrest in connection with Crime No.157 of 2021 registered with Pimpaldari Police Station, District-Parbhani, for the offence punishable under Sections 328, 272, 273, 188 of the Indian Penal Code and under Sections 26 (2) (6), 27, 23, 30 (2) (a) and 59 (6) of the Food Safety and Standards Act.

2. Heard learned Advocate for the applicants and learned APP for the respondent – State.

3. It has been vehemently submitted on behalf of the applicants that perusal of the First Information Report would show that it was registered against one Mahesh Manohar Balsetwad. He was caught raid handed by the raiding team with packets of Gutka i.e. banned article, Scented Tobacco and Masala. It is the further prosecution story that as the investigation progressed, on the same day of custody when inquiry was made with said Mahesh, he gave names of three persons, namely, Waman Balaji Jadhav, Amol Balaji Jadhav and Dnyaneshwar Marotrao Shinde. However, later on prosecution states that again said Mahesh made statement which led to the

arrest of Govindlal Bansilal Pallod, Yadav Suryakant Chavan, Latif Mahmad Shaikh, Yogesh Nitin Yadav and Tulshiram Anandrao Chavan. Thereafter, once again during the period of two days police custody, accused Govindlal Pallod made statement that in his shop he sits for certain period only and the entire affairs of the shop are looked after by his son Lallu alias Laxmikant Govindlal Pallod i.e. applicant in Anticipatory Bail Application No.56 of 2022. Further, co-accused Yadav Chavan made statement that one Abdul Salim s/o Abdul Mannan Saudagar i.e. applicant in Anticipatory Bail Application No.18 of 2022, is also big businessman dealing in Gutka illegally and he purchases Gutka from about six persons whose names he has mentioned. That means, on the basis of the statement of those co-accused, the police want to arrest the applicants, however, there is no connecting material with them. The custodial interrogation of the applicants is not necessary.

4. Per contra, the learned APP strongly opposed the applications and submitted that as per the police report, accused Mahesh was found possessing banned Gutka / Tobacco. He was very well having knowledge that Gutka is banned in the State of Maharashtra and that decision has been taken in the interest of

public health. Though the shops appeared to be in the names of the applicants herein, yet their relatives have been arrested when the raid was conducted on their shops. From the shop of Pallod further articles have been seized which are banned. Under such circumstance, there is a connection and said Govindlal Pallod is an old person who is not carrying out the affairs of the business personally for a long period. Every knowledge is with the applicants and therefore, their custodial interrogation is necessary.

5. Before proceeding further the legal position is required to be considered in respect of offence under Section 328 of the Indian Penal Code in connection with Gutka. In ***Anand Ramdhani Chaurasia and another vs. State of Maharashtra, 2019 SCC OnLine Bom. 1857*** and in ***Anticipatory Bail Application No. 944 of 2020*** with companion matters, decided on 30th September, 2021 (***Coram:V.G. BISHT, J.***), whereby in similar situations the applicants therein who have been arrested holding or possessing Gutka, have been released on anticipatory bail, holding that offence under Section 328 of the Indian Penal Code has not been

made out. Ratio laid down in ***Joseph Kuruian Philip Jose vs. State of Kerala, (1994) 6 SCC 535*** was relied.

6. At the outset, it is to be noted that though this Court (**Coram:V.G. BISHT, J.**) in the aforesaid Judgment and order in ***Anticipatory Bail Application No.944 of 2020*** with companion matters, had come to the conclusion that in such facts of the cases offence under Section 328 of the Indian Penal Code cannot be said to have been made out, there is another set of decision in ***Anticipatory Bail Application No.1405 of 2021*** with companion matters, decided by this Court (**Coram: PRAKASH D. NAIK, J.**) on 23rd December 2021, wherein it has been held that in such cases offence under Section 328 of the Indian Penal Code can be said to have been made out and hence certain applications were rejected and certain applications came to be withdrawn when disinclination was shown by the Court. In both the matters, mainly decisions of this Court in ***Anand Ramdhari Chaurasia and another vs. State of Maharashtra*** (supra) and in ***Ganesh Pandurang Jadhav vs. State of Maharashtra (Criminal Writ Petition No.1027 of 2015 with companion matters)*** were referred and note was taken that Hon'ble Apex Court has stayed the decisions of this Court. Those

were the cases in which the First Information Reports were sought to be quashed under Section 482 of the Code of Criminal Procedure Code on the ground that offence under Section 328 of the Indian Penal Code has not been made out. However, note of other two decisions by the Division Bench of this Court were also taken. One is in the case of ***Vasim S/o Jamil Shaikh vs. State of Maharashtra and another in Criminal Application No. 4353 of 2016*** decided on 29th November 2018, wherein this Court was also one of the party, **(CORAM: T.V. NALAWADE AND SMT. VIBHA KANKANWADI, JJ.)**, and in that decision view was taken that the contention of the applicant that in such cases provisions of Section 328 of the Indian Penal Code cannot be used, is unacceptable. Thereafter, there is also case of ***Zahir Ibrahim Panja and others vs. State of Maharashtra and others (Criminal Application No.4968 of 2016)*** decided on 16th October 2018, wherein it was held that Section 328 of the Indian Penal Code can be invoked in such cases.

7. As regards the decision in ***Joseph Kurian Philip Jose*** is concerned, it was referred in ***Anand Ramdhari Chaurasia*** (supra), wherein ***Vasim Shaikh's case*** (supra) was held to be *per incuriam* in view of ***Joseph Kuruian Philip Jose***. However,

the position stands and it has been so considered in ***Anticipatory Bail Application No.1405 of 2021*** (supra) that the said decision has been stayed by the Apex Court and therefore, this Court would agree with the reasons given by this Court (**CORAM: PRAKASH D. NAIK, J.**) in ***Anticipatory Bail Application No.1405 of 2021*** with companion matters, decided on 23rd December 2021.

8. In spite the fact that in such cases offence under Section 328 of the Indian Penal Code can be invoked, now it is required to be seen, whether there is any material to connect present applicants with the crime. Again it can be observed that in ***Anticipatory Bail Application No.1405 of 2021*** with companion matters, this Court had come to the conclusion that the applicants therein were found possessing the banned articles and therefore it will not be a good case to release them. However, in the present case the applicants are not the persons in whose custody the banned articles were found. On the basis of statement made by co-accused it is the prosecution story that the present applicants run the business and they have knowledge of the business. It is tried to be shown that the the persons who were arrested, were not having knowledge of the

business. When in fact, as regards Govindlal Pallod is concerned, it is the prosecution story from the police papers that he was found possessing the banned article and his son Laxmikant i.e. present applicant in Anticipatory Bail Application No.56 of 2022 was not present at the spot at that time. Then, whether the police want to harp upon the fact of possession or not, is a question. Same is the case with accused Abdul Salim S/o Abdul Mannan Saudagar - applicant in Anticipatory Bail Application No.18 of 2022. On the basis of statement of co-accused Yadav Chavan that he purchases Gutka from applicant - Abdul Salim, police want to arrest applicant - Abdul Salim. The evidentiary value to the statement of the co-accused is nil. That means, it cannot be considered at all. Therefore, custodial interrogation of the applicants is not required for the purpose of investigation. If attendance is granted to them, the investigation can still go on. With these observations, following order is passed:-

ORDER

- i) Both the Applications stand allowed.
- ii) In the event of arrest of the applicant - Laxmikant S/o Govindlal Pallod (in Anticipatory Bail Application No.56 of 2022) and the applicant - Abdul Salim S/o Abdul Mannan Saudagar (in

Anticipatory Bail Application No.18 of 2022), in connection with Crime No.157 of 2021 registered with Pimpaldari Police Station, District-Parbhani, for the offence punishable under Sections 328, 272, 273, 188 of the Indian Penal Code and under Sections 26 (2) (6), 27, 23, 30 (2) (a) and 59 (6) of the Food Safety and Standards Act, they be released on bail on PR Bond of Rs.30,000/- (Rupees Thirty Thousand) each with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand) each.

iii) Both the applicants shall attend Pimpaldari Police Station on every Monday between 11.00 a.m. to 2.00 p.m. till filing of the charge-sheet and co-operate with the investigation.

iv) They shall not tamper with the evidence of the prosecution in any manner.

[SMT. VIBHA KANKANWADI , J.]

asb/JAN22