

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

ANTICIPATORY BAIL APPLICATION NO.94 OF 2022

Mujahid Khan @ Mujeeb
S/o Naseeb Khan Pathan

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.S.R. Bagal Advocate for Applicant.
Mr.B.V. Virdhe, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 10th MARCH, 2022

ORDER :

1. Applicant is apprehending his arrest in connection with Crime No.233 of 2021 registered with Police Station, Purna, Taluka-Purna, District-Parbhani for the offence punishable under Sections 328, 269, 272, 273, 188 of the Indian Penal Code.
2. Heard learned Advocate Mr. Bagal for the applicant and learned APP Mr. Virdhe for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that perusal of the First Information Report would show that accused Wajed Khan was caught raid handed by the raiding team, who was found to be transporting banned Gutka / Tobacco packets in Auto Rickshaw bearing No. MH-22-AP-0700. It is the further prosecution story that on interrogation, said accused Wajed Khan disclosed the name of the present applicant as the person from whom he has purchased the said banned articles. That means on the basis of the statement of the accused, the Police want to arrest the present applicant. It is also submitted that Section 328 of the Indian Penal Code is not attracted to the case as it is. There was no connecting material with the Police to connect the present applicant with the crime. His custodial interrogation is not necessary.

4. Per contra, the learned APP strongly opposed the Application and submitted that as per the police report the co-accused Wajed Khan was found to be transporting the banned Gutka / Tobacco. The purpose for which Gutka is banned in the State of Maharashtra is well known and it is in the interest of public health. However, the information has been given by the co-accused that he has purchased the said Gutka from the

present applicant and therefore his custody is required to reveal as to how he deals in such hazardous goods which are causing health problems to the generations.

5. Before proceeding further, it will not be out of place to mention that this Court in ***Anticipatory Bail Application No.1530 of 2021***, vide order dated 12th January 2022, has given detailed reasons as to how Section 328 of the Indian Penal Code can be invoked in such type of cases.

6. In spite of 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 applicant with the crime. Admittedly, in the present case the applicant is not the person in whose custody the banned articles were found. Co-accused Wajed Khan disclosed the name of the present applicant as the person from whom he had purchased the banned articles. Though the name of the applicant was allegedly revealed by the arrested accused on 13th June 2021 itself, no raid has been conducted by the Investigating Officer up till now on the business place of the applicant to establish the connection between the offence and the applicant. It indicates

that physical custody of the applicant is not required. Further, it is to be noted that on the basis of statement of co-accused Wajed Khan police want to arrest applicant. Statement of co-accused is inadmissible in the evidence and therefore, custodial interrogation of the applicant is not necessary for the purpose of investigation. If attendance is directed to be given, the investigation can still go on and as such the Application deserves to be granted. Accordingly, the following order is passed:-

ORDER

- i) Application stands allowed.
- ii) In the event of arrest of the applicant – Mujahid Khan @ Mujeeb S/o Naseeb Khan Pathan in connection with Crime No.233 of 2021 registered with Police Station, Purna, Taluka-Purna, District-Parbhani for the offence punishable under Sections 328, 269, 272, 273, 188 of the Indian Penal Code, he be released on bail on PR Bond of Rs.30,000/- (Rupees Thirty Thousand) with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand) each.

iii) Applicant shall attend Police Station, Purna on every Monday between 10.00 a.m. to 2.00 p.m. till filing of the charge-sheet and co-operate with the investigation.

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

v) Applicant shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI , J.]