

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.201 OF 2022

NIRAJ S/O JADGISH CHOUDHARI
VERSUS
THE STATE OF MAHARASHTRA

...

WITH
ANTICIPATORY BAIL APPLICATION NO.162 OF 2022

ASHOK KISAN DAWLE
VERSUS
THE STATE EXCISE DEPARTMENT, AURANGABAD

...

Mr. S. S. Thombre, Advocate for the applicant in ABA/201/2022.
Mr. S. B. Rajebhosale, Advocate for applicant in ABA/162/2022.
Mrs. Vaishali Patil Jadhav, APP for the respondents – State in both cases.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 01.03.2022

Pronounced on : 08.04.2022

ORDER :-

. Both the applicants are apprehending their arrest in connection with Crime No.200 of 2021 registered with State Excise Department-A Division, Dist. Aurangabad for the offences punishable under Sections 65(a)(b)(c)(d)(e)(f), 80, 81, 83, 90, 108 of the Maharashtra Prohibition Act and under Section 328 of Indian Penal Code.

2. Heard learned Advocate Mr. S. S. Thombre for the applicant in ABA/201/2022, learned Advocate Mr. S. B. Rajebhosale for the applicant

in ABA/162/2022 and learned APP Mrs. Vaishali Patil Jadhav for the respondents – State in both the cases. In order to cut short, it can be said that all of them have made submissions in support of their respective contentions.

3. Perusal of the FIR lodged by P.S.I. Ganesh Suryakant Pawar attached to State Excise Department-A Division, Aurangabad would show that he had received secret information that country liquor is being manufactured in the premises of Jayjawan Sainik Police Bhartipurva Prashikshan Sanstha, Gut No.77, Adgaon (Bk.), Taluka and District Aurangabad. That institution is run by the applicant in ABA No.162 of 2022 and the applicant in ABA No.201 of 2022 is the associate of applicant in ABA No.162 of 2022. The raid was conducted in the said premises. At the time of raid, the manufacturing activity of the liquor was going on. About 7132 bottles of manufactured and sealed liquor were seized along with the machinery and storage articles. So also, they had seized the Tata pickup vehicle as well as two Hero Honda motorcycles. In all, Muddemal worth Rs.19,07,160/- was seized from the possession of the arrested persons. In all five persons were arrested at the spot. About 10 persons are shown to be yet to be arrested including the present applicants.

4. The applicant in ABA No.162/2022 contend that they had taken the said premises on rent. He is an ex-army man and he was giving training to those persons, who are the aspirants of joining police department. The land belongs to one Ganesh Jagdale. The rent agreement was executed on 30.11.2021, however, due to pandemic situation of Covid-19, there was no admission in the said training centre except by one Prashant Khairnar, who is said to be co-accused arrested at the spot. Thereafter, it is stated that one Amol Bakal approached the applicant – Ashok Dawle in the month of December, 2021 that the land and five rooms should be given to him on sub-tenancy basis for manufacturing of hand sanitizer. There was oral contract and the physical possession of those rooms were given by Ashok to Amol. Both the applicants contend that there is no connection between them and the manufactured item. The copy of the rent agreement has been produced which is between Ashok and land owner Ganesh Jagdale.

5. The learned Advocates have relied on the decision of this Court in ***Ravindra Anandrao More Vs. The State of Maharashtra, [2015 SCC OnLine Bom 8149]***, wherein in similar circumstances it was observed that “when there is no *prima facie* material to indicate that the applicant had administered or caused any person to take any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent

to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, then *prima facie* offence under Section 328 of Indian Penal Code is not made out. Further, reliance has been placed on the decision in ***Bhimrao s/o Fula Rathod Vs. The State of Maharashtra***, (Anticipatory Bail Application No.553 of 2020 decided on 10.08.2020), wherein under similar circumstances, by relying upon the decision in ***Joseph Kurian, Philip Jose Vs. State of Kerala, [(1994) 6 SCC 535]***, it was held that when there is doubt as to whether Section 328 of Indian Penal Code would be attracted or not, then the physical custody of the applicant is not required. It is then stated that the other Sections are bailable which are in respect of the Maharashtra Prohibition Act.

6. Definitely, it is to be noted that the applicant – Ashok comes in picture by virtue of the rent agreement, but then according to him there was oral contract between him and Amol Bakal. We may not rely upon that oral statement by the said applicant at this stage, because it requires proof by the said applicant. Yet, neither both the applicants were present at the spot, nor any such person who can be said to be the “customer” of liquor was present. Therefore, definitely the ratio laid down in ***Joseph Kurian (Supra)*** would be applicable. That was the case under Kerala Abkari Act, wherein it was observed that :-

“In order to prove offence under Section 328 of Indian Penal Code, the prosecution is required to prove that the substance in question was a poison, or any stupefying, intoxicating or unwholesome drug etc, that the accused administered the substance to the complainant or caused the complainant to take such substance, that he did so with intent to cause hurt or knowing it to be likely that he could thereby cause hurt or with the intention to commit or facilitate the commission of an offence.”

The prosecution now wants to rely on the statements of the co-accused, who were arrested at the spot, but that piece of evidence is inadmissible. Further, the police papers would show that the manufactured liquor having label “देशी दारु टॅगो पंचा सखु संत्रा” was sent to M/s. Brihan Karan Sugar Syndicate Pvt. Ltd., Gondhe, Tq. Igatpuri, Dist. Nashik, who is said to be the owner of the brand for analysis. They have stated that the label and the other material appearing on the bottles are fake and the intensity of the liquor found to be 30.08°UP which should be 25°UP as per the standard. The first and the foremost fact is that the samples appeared to be not sent to the Government analyst. Even if they are sent, the police papers do not show the report. The report given by the said sugar factory whether can be accepted is a question. Therefore, there is no concrete evidence before this Court to

prima facie conclude that the substance that was seized was liquor. Therefore, custodial interrogation of the applicants is not required. Under such circumstance, the applicants deserve protection. Hence, the following order :-

ORDER

- I) Applications are hereby allowed.
- II) In the event of arrest of applicant in ABA/201/2022 i.e. Niraj s/o Jagdish Choudhari and applicant in ABA/162/2022 i.e. Ashok Kisan Dawle, in connection with Crime No.200 of 2021 registered with State Excise Department-A, Division, Dist. Aurangabad for the offences punishable under Sections 65(a)(b)(c)(d)(e)(f), 80, 81, 83, 90, 108 of the Maharashtra Prohibition Act and under Section 328 of Indian Penal Code, they be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- III) The applicants shall remain present before the Investigating Officer on every Monday, Wednesday and Friday between 10.00 a.m. to 12.00 p.m. till filing of charge-sheet and cooperate with the investigation.
- IV) They shall not tamper with the evidence of the prosecution in any manner.
- V) They shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]

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