

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

ANTICIPATORY BAIL APPLICATION NO.208 OF 2022

Shankar S/o Govind Gadewar

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.B.N. Gadegaonkar Advocate for Applicant.
Mr.B.V. Virdhe, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 14th MARCH, 2022

ORDER :

1. Applicant is apprehending his arrest in connection with Crime No.390 of 2021 registered with Police Station, Mukhed, District-Nanded for the offence punishable under Sections 188, 272, 273, 328 of Indian Penal Code and Section 59 of the Food Safety and Standards Act.
2. Heard learned Advocate Mr. Gadegaonkar 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 it was registered against the persons namely, Parmeshwar Vibhute, Uttam June, Arshad Sayyad, Dipak Patil, Ranjeet Kadam and Firoz Subhani. It is submitted that perusal of First Information Report would further show that accused – Parmeshwar Vibhute was caught red handed by the raiding team, who was found to be transporting banned Gutka / Tobacco packets in the vehicle bearing No.MH-26-H-6164. It is the further prosecution story that on interrogation, said accused Parmeshwar Vibhute disclosed the name of the present applicant as the person from whom he brought the said Gutka. 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. In the First Information Report, name of the present applicant is not mentioned. There was no connecting material with the Police to connect the present applicant with the crime. Custodial interrogation of the applicant is not at all necessary.

4. Per contra, learned APP strongly opposed the Application and submitted that as per the Police report, the co-accused Parmeshwar Vibhute was found to be transporting the banned

Gutka / Tobacco. The purpose for which the 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 brought the said Gutka from the present applicant for delivering the same to other accused persons and therefore, his custody is required to reveal as to how he deals in such hazardous goods which are causing health problems to the public.

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 applicant is not the person in whose custody the banned articles were found. The name of the present applicant is not appearing in the First Information Report, however, in the remand report it is stated that on the statement made by the accused who was

apprehended, the name of the present applicant was revealed as the person from whom he has brought the said banned articles for delivering the same to other accused persons. Further, it is to be noted that on the basis of statement of co-accused, police want to arrest applicant. The evidentiary value to the statement of co-accused is nil 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 – Shankar S/o Govind Gadewar in connection with Crime No.390 of 2021 registered with Police Station, Mukhed, District-Nanded for the offence punishable under Sections 188, 272, 273, 328 of Indian Penal Code and Section 59 of the Food Safety and Standards Act, 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, Mukhed 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.]