

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

ANTICIPATORY BAIL APPLICATION NO.213 OF 2022

Maroti S/o Ramrao Patharkar

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Mahesh P. Kale Advocate for Applicant.
Mr.B.V. Virdhe, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 17th MARCH 2022

DATE OF PRONOUNCING ORDER : 8th APRIL 2022

ORDER :

1. Applicant is apprehending his arrest in connection with Crime No.22 of 2022 registered with Police Station, Purna, District-Parbhani for the offence punishable under Sections 328, 272, 273, 188 of the Indian Penal Code.

2. Heard learned Advocate Mr. Kale 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 that has been lodged by Police Constable – Nagnath Nathrao Mundhe attached to Police Station, Parbhani would show that on receipt of secret information, the raid was conducted at the house of the applicant at village Katneshwar. It is stated that they had seized 21 packets of Vimal Panmasala, 20 packets of Vimal Tobacco, 67 packets of Rajniwas Panmasala, 96 packets of XL-01 Jafrani Jarda, 29 packets of Goa Gutka, 2 packets of R.M.D. Gutka, 2 packets of R.M.D. Jarda, 19 packets of Vajir Gutka etc. The total worth of the muddemal seized was Rs.37,733/-. It is submitted that it is alleged that the police authorities have seized the stock of Gutka and Panmasala, it is not mentioned in the complaint that the applicant was selling those articles to any customer. It is submitted that Section 328 of the Indian Penal Code is not attracted to the case as it is. It is then submitted that the applicant has no criminal antecedents. The police had already seized the banned articles and therefore custodial interrogation

of the applicant is not necessary. Applicant is ready to abide by the terms of the bail.

4. Per contra, learned APP strongly opposed the Application and it is stated that in view of the First Information Report and the order passed by the learned Additional Sessions Judge while rejecting the application filed by the present applicant, the custodial interrogation of the applicant is necessary. It is further submitted that applicant was found possessing banned Gutka / Tobacco in huge quantity. He was very well having knowledge that Gutka / Tobacco is banned in the State of Maharashtra and the said decision has been taken in the interest of public health. From the shop of the applicant the articles in such huge quantity have been seized which are banned. The custodial interrogation of the applicant is necessary to reveal as to from where the hazardous goods, which are causing health problems to the generations, were purchased.

5. Before proceeding further, it will not be out of place to mention that this Court in ***Anticipatory Bail Application No.1530 of 2021***, by 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. Perusal of the First Information Report would show that the applicant was very much present at the time when raid was conducted and from his place the banned articles were seized. The Gutka of various types worth Rs.37,733/- has been seized. Therefore, question arose for this Court as to why the applicant was not arrested by the Police. Affidavit has been filed by Probationary Police Sub Inspector, Purna Police Station, District-Parbhani, Mr. Mahendrakumar Shamrao Popalwar stating that the custody of the applicant was handed over to him after registration of the offence and handing over of the investigation to him. When he started formalities of arrest panchnama, entry in the station diary etc., at that time applicant was feeling uneasy and was unstable. Therefore, applicant was firstly taken to Government Hospital, Purna. The blood pressure of the applicant was 260 / 160 and therefore, the medical officer opined that those were the symptoms of heart attack and applicant was having history of blood pressure and sugar and therefore, it was stated that he should be taken to hospital at Parbhani or Nanded for higher treatment. The applicant was then

required to be taken in ambulance to Adhar Hospital, Nanded where he was admitted and therefore the custody of the applicant was then handed over to his nephew. It is therefore, stated that considering the ill-health of the applicant he was not arrested.

7. The fact remains is that when the contraband in such huge quantity was seized from the applicant but he could not be arrested because of his health condition at that time, he cannot now take advantage of that situation and avoid the arrest. Thus, taking into consideration the facts, this is not a fit case where extraordinary powers should be exercised in favour of the applicant and the Application deserves to be rejected.

8. Accordingly, the Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]