

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

ANTICIPATORY BAIL APPLICATION NO.221 OF 2022

Javed Baig S/o Aslam Baig Mirza

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
- 2) The Police Inspector,
Jintur Police Station,
Tq-Jintur, Dist-Parbhani.

...RESPONDENTS

...
Mr.S.S. Kazi Advocate h/f. Mr. M.N. Shaikh Advocate for
Applicant.
Mr.V.M. Kagne, 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.24 of 2022 registered with Jintur Police Station, District-Parbhani for the offence punishable under Sections 272,

273, 328 of the Indian Penal Code and Sections 26(2)(iv), 27(2)(e), 30(2)(a) and 59 of the Food Safety and Standards Act, 2006.

2. Heard learned Advocate Mr. Kazi holding for Mr. Shaikh Advocate for the applicant and learned APP Mr. Kagne for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that the First Information Report that has been lodged by Police Naik Mr. Siddheshwar Dadarao Chate would show that on receiving secret information they reached at Siddiqui Complex, Yeldari Road. They had apprehended one Javed Khan Taher Khan Pathan and Mehboob Khan Anwar Khan Pathan who found to be transporting banned Gutka / tobacco packets in the Scorpio vehicle bearing No.MH-22-N-5222 and Swift Dzire vehicle bearing No.MH-12-QG-3440. It is the further prosecution story that on interrogation, said two accused persons disclosed the name of the applicant by stating that said Gutka packets were being transported at the instance of the present applicant and one another accused by name Mansoor Khan Samandar Khan. That means, on the basis of the statement of the accused the Police want to arrest the applicant. Applicant was not present

at the spot at the time of alleged raid. It is submitted that the provisions of Section 328 of the Indian Penal Code are not attracted to the case as it is. Police already conducted the Panchnama and seized the articles and the vehicles. Investigation is complete and even charge-sheet is filed and therefore, custodial interrogation of the applicant is not necessary.

4. Per contra, the learned APP strongly opposed the Application and submitted that as per the Police report the co-accused Javed Khan Taher Khan Pathan and Mehboob Khan Anwar Khan Pathan were 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 they were transporting the said Gutka at the instance of the present applicant and therefore his custody is required to reveal as to how he deals in such hazardous goods. Learned APP further submits that though in this case charge-sheet is filed however, as the present applicant is absconding since the date of registration of offence, his custodial interrogation is necessary in view of the statements given by the

arrested accused that both the vehicles involved in the present crime belongs to the present applicant.

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. 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. The investigation in this case is complete and the charge-sheet is filed. Though it is stated that the applicant is absconding, it is to be noted that no proceedings under Section 82 of the Code of Criminal Procedure appears to have been undertaken by the Investigating Officer. A stereo-type orders and reports have been given when it is stated that two absconding accused should be searched and arrested. Though name of the present applicant is appearing in the First Information Report, it is stated that the arrested persons had taken the name of the present applicant stating that Gutka was procured on the say of the present applicant and co-accused

Mansoor Khan Samandar Khan. Further, it is stated that two vehicles which were seized on the spot which were stated to be carrying the banned articles, are stated to be belonging to the present applicant. However, in the charge-sheet we do not find any such report from R.T.O. authorities showing that those vehicles belong to the present applicant. Admittedly, in the present case applicant is not the person in whose custody the banned articles were found. Unless there is something to connect the applicant with the crime, it cannot be said that his custodial interrogation is necessary. Now, except the statement of the co-accused, there is nothing against the applicant though investigation is complete and therefore, he deserves to be released on bail. Accordingly following order is passed:-

ORDER

- i) The Application stands allowed.
- ii) In the event of arrest of the applicant – Javed Baig S/o Aslam Mirza in connection with Crime No.24 of 2022 registered with Jintur Police Station, District-Parbhani for the offence punishable under Sections 272, 273, 328 of the Indian Penal Code and Sections 26(2)(iv), 27(2)(e), 30(2)(a) and 59 of the

Food Safety and Standards Act, 2006, 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 remain present before the Investigating Officer if the Investigating Officer calls for in connection with further investigation under Section 173(8) of the Code of Criminal Procedure.

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.]