

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

ANTICIPATORY BAIL APPLICATION NO.224 OF 2022

Mohammad Awes S/o Mohammad Pashu

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

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

WITH

ANTICIPATORY BAIL APPLICATION NO.286 OF 2022

Md. Shakiruddin S/o Md. Khaja

...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 : 22nd MARCH, 2022

ORDER :

1. Both the applicants are apprehending their arrest in connection with Crime No.246 of 2021 registered with Police Station, Usman Nagar, District-Nanded, for the offence punishable under Sections 188, 272, 273, 328 read with Section 34 of the Indian Penal Code and Sections 26, 27, 30(2)(a), 59 of the Food Safety and Standards Act.

2. Heard learned Advocate Mr. Gadegaonkar for the applicants and learned APP Mr. Virdhe for the respondent – State.

3. It has been vehemently submitted on behalf of the applicants that perusal of the First Information Report (for short “FIR”) that has been lodged by Food Safety Inspector, Nanded would show that on receiving information, they visited the spot and seized certain packets of Gutka i.e. banned articles, Scented Tobacco, Pan Masala etc. It is further submitted that further perusal of the FIR would show that it was registered against Hanumant Dadarao Dhepe, Dinesh Pandit Bhong and other two shop owners whose names are not mentioned in the FIR. It is submitted that accused Hanumant Dadarao Dhepe and Dinesh

Pandit Bhong were present on the spot from whose possession with the banned articles were seized. It is the further prosecution story that as the investigation progressed in the remand report dated 27th December 2021 it was informed to the Magistrate that while interrogating those two accused persons, information has been given by them that said Gutka has been purchased by them from the present applicants. That means on the basis of the statement of the accused, the Police want to arrest the present applicants. It is also submitted that Section 328 of the Indian Penal Code is not attracted to the case as it is. In the FIR, names of the present applicants are not mentioned. There was no connecting material with the Police to connect the present applicants with the crime. Custodial interrogation of the present applicants is not at all necessary.

4. Per contra, learned APP strongly opposed the Applications and submitted that as per the police report the co-accused Hanumant Dadarao Dhepe and Dinesh Pandit Bhong were found to be possessing the banned Tobacco / Gutka. 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 Dinesh Bhong that he has purchased the said banned articles from Mohammad

Awes S/o Mohammad Pashu i.e. applicant in Anticipatory Bail Application No.224 of 2022. Further, the information has been given by another co-accused Hanumant Dadarao Dhepe that he has purchased the said banned articles from Md. Shakiruddin S/o Md. Khaja i.e. applicant in Anticipatory Bail Application No.286 of 2022. Therefore custody of the present applicants is required to reveal as to how they deal in such hazardous goods.

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 applicants with the crime. Admittedly, in the present case the applicants are not the persons in whose custody the banned articles were found. The names of the present applicants are not appearing in the FIR, however, in the remand report it is stated that on the statements made by the accused who were apprehended, names of the present applicants were revealed as

the persons from whom they have purchased the said banned articles. Thus, on the basis of statement of co-accused, police want to arrest the present applicants. Statement of the co-accused is inadmissible in the evidence and therefore, custodial interrogation of the applicants is not necessary for the purpose of investigation. If attendance is directed to be given, the investigation can still go on and as such both the Applications deserve to be granted. Accordingly, following order is passed:-

ORDER

- i) Both the Applications stand allowed.
- ii) In the event of arrest of the applicant – Mohammad Awes S/o Mohammad Pashu in Anticipatory Bail Application No.224 of 2022, and the applicant – Md. Shakiruddin S/o Md. Khaja in Anticipatory Bail Application No.286 of 2022, in connection with Crime No.246 of 2021 registered with Police Station, Usman Nagar, District-Nanded, for the offence punishable under Sections 188, 272, 273, 328 read with Section 34 of the Indian Penal Code and Sections 26, 27, 30(2)(a), 59 of the Food Safety and Standards Act, they be released on bail on PR Bond of

Rs.30,000/- (Rupees Thirty Thousand) each with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand) each.

iii) Both the Applicants shall attend Police Station, Usman Nagar, District-Nanded on every Monday between 11.00 a.m. to 2.00 p.m. till filing of the charge-sheet and co-operate with the investigation.

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

v) Applicants shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI , J.]