

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

ANTICIPATORY BAIL APPLICATION NO.225 OF 2022

Shaikh Qayyum S/o Shaikh Ibrahim

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr. Shaikh Wajeed Ahmed Advocate for Applicant.
Mr. A.M. Phule, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 9th MARCH 2022

DATE OF PRONOUNCING ORDER : 4th APRIL 2022

ORDER :

1. Applicant is apprehending his arrest in connection with Crime No.364 of 2021 registered with Police Station, Purna, District-Parbhani, for the offence punishable under Sections 328, 272, 273, 188 read with Section 34 of the Indian Penal Code.
2. Heard learned Advocate Mr. Shaikh for the applicant and

learned APP Mr. Phule for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that perusal of the First Information Report (for short “FIR”) would show that it was registered against two persons, namely, Manik Bapurao Kadam and Ananda Udhavrao Dhone. It is submitted that perusal of the FIR would further show that accused Manik Kadam and Ananda Dhone were caught red handed by the raiding team, who were found to be transporting banned Gutka / Tobacco packets in the vehicle bearing No.MH-23-AD-3776. It is the further prosecution story that on interrogation, accused – Manik Kadam disclosed the name of present applicant as the person from whom he purchased the said banned articles. That means on the basis of the statement of the accused, 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 FIR, 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 co-accused Manik

Kadam and Ananda Dhone were found to be transporting the banned Gutka. Accused – Manik Kadam disclosed the name of present applicant as the person from whom he purchased the said banned articles. It is submitted that in the remand papers it was mentioned that there were calls between accused Ananda Dhone and the present applicant and the Mobile CDR and SDR shows the communication between accused and applicant. The information has been given by the co-accused that he had purchased the said Gutka from the present applicant, therefore, custody of the applicant is required to reveal as to how he deals 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 applicant with the crime. It is the prosecution story that it was mentioned in the remand papers that there were calls between

accused Ananda Dhone and the applicant and Mobile CDR and SDR shows the communication between accused and applicant, however the said fact is not sufficient. So far as the communication is concerned, it does not per-se disclose that the communication was in respect of purchase of banned articles only. 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 one of the accused who was apprehended, the name of the present applicant was revealed as the person from whom he has purchased the said banned articles. Further, it is to be noted that on the basis of statement of co-accused, police want to arrest applicant. Statement of the accused to the Police while in custody has no evidentiary value 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 – Shaikh Qayyum S/o Shaikh Ibrahim in connection with Crime No.364 of 2021 registered with Police Station, Purna, District-Parbhani, for the offence punishable under Sections 328, 272, 273, 188 read with Section 34 of the Indian Penal Code, 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, Purna on every Saturday 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.]