

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

ANTICIPATORY BAIL APPLICATION NO.243 OF 2022

Javeed Pasha Ameer Jan

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.G.M. Kolhe Advocate and Mr. A.B. Katkar Advocate for
Applicant.
Mr.A.M. Phule, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 11th MARCH, 2022

ORDER :

1. Applicant is apprehending his arrest in connection with Crime No.363 of 2021 registered with Partur Police Station, District-Jalna for the offence punishable under Sections 188, 272, 273, 328 read with Section 34 of the Indian Penal Code and under Sections 26, 26(2), 26(4), 27(3)(e), 30(2)(a), 59 of the Essential Commodities Act.

2. Heard learned Advocate Mr. Kolhe and learned Advocate Mr. Katkar 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") that has been lodged by API Ravindra Thakare attached to Partur Police Station would show that on suspicion they have intercepted one vehicle, i.e. Eicher Truck bearing No.MH-43-Y-0444. They have apprehended one Akram Pasha Galib Pasha. It is stated that from the said vehicle, they have seized 24 gunny bags containing Gutka worth Rs.14,40,000/-. It is the further prosecution story that during investigation the arrested accused disclosed that the said vehicle belongs to the present applicant. It is submitted that admittedly the applicant was not present on the spot nor the articles were seized from his possession. Applicant is not aware as to whether his vehicle was used for transportation of banned articles. As per his application, the custody of the said vehicle is ordered to be given to the applicant by the learned Judicial Magistrate First Class, Partur. 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 and therefore his custodial interrogation is not necessary.

4. Per contra, learned APP strongly opposed the application and stated that custodial interrogation of the applicant is necessary in view of the fact that co-accused Akram Pasha Galib Pasha, who was arrested at the spot, has disclosed the name of the present applicant as owner of the said vehicle and further disclosed that for so many times he has transported the banned articles in the said vehicle. Learned APP further submits that applicant is a Gutka Mafia and therefore his custodial interrogation is necessary to reveal as to from where he purchases the said contraband articles and to whom he sells the same, as Gutka worth Rs.14,40,000/- has been seized from the vehicle owned by 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***, 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. It is to be noted that the applicant is the owner of the vehicle from which 24 gunny bags of Gutka worth Rs.14,40,000/- were seized. The applicant is not explaining as to how banned articles in such huge quantity could be found in his vehicle. When such banned articles were found in the vehicle owned by the applicant, then exactly who had brought those banned articles and from where the same were purchased, is required to be revealed and for that purpose custodial interrogation of the applicant is definitely necessary. Case is, therefore, not made out to grant extra ordinary relief.

7. Accordingly, the Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]