

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

16 ANTICIPATORY BAIL APPLICATION NO.166 OF 2021

1. LOCHANABAI DHALAJI GIRE
2. BAJARANG DHALAJI GIRE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Suresh P. Salgar h/f Mr. Gaware
Niteen V.
APP for Respondent-State : Mr. V. M. Kagne.
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CORAM : S. G. MEHARE, J.
DATE : 12.09.2022

PER COURT :-

1. Heard the learned counsel for the applicants and the learned APP for the respondent-State.

2. The prosecution has a case that they were manufacturing the country liquor by using the harmful chemicals. The police have taken the raid. That time, both the applicants fled away. Police seized the country liquor from the spot of the incident. The police have applied Section 328 along with Sections 188, 269, 270 and 290 of the IPC read with Sections 2, 3, 4 of the Epidemic Diseases Act, Section 51(b) of the Disaster Management Act and Section 65(e)(f) of the Maharashtra Prohibition Act. Learned counsel for the applicants has

vehemently argued that Section 328 of the IPC is not attracted. The applicants were not involved in administering the substance prohibited in Section 328 of the IPC. The entire material has been seized from the spot of the incident. Nothing is to be recovered from them. Hence, interim protection granted to them by the order dated 24.02.2021 may kindly be confirmed.

3. Learned APP has strongly opposed the application. He has vehemently argued that the chemical used for the liquor was harmful to the human life. The illegal business of manufacturing the country liquor was done by the applicants during the Covid Pandemic-19. In the above facts of the case, Section 328 of the IPC would attract.

4. Perused the papers. It appears that the police had the successful raid. They have recovered the country liquor from the spot of the incident. The papers produced by the prosecution does not include the chemical report to satisfy that any of the substance used in manufacturing the liquor was harmful to the life of the consumers. In the absence of any material, it would be difficult to believe that the applicants may be taken for custodial interrogation for the offence punishable under Section 328 of the IPC with other Sections

applied in the crime. Therefore, the application deserves to be allowed. Hence, the following order :

ORDER

- (i) The application is allowed.
- (ii) The interim protection granted to the applicants by the order dated 24.02.2021 is confirmed on the same terms and conditions.

(S. G. MEHARE, J.)

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vmk/-