

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

ANTICIPATORY BAIL APPLICATION NO.315 OF 2022

Satish S/o Eknath Salvi.

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Rahul R. Karpe Advocate for Applicant.
Mr.V.M. Kagne, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 24th MARCH, 2022

ORDER :

1. Applicant is apprehending his arrest in connection with Crime No.120 of 2022 registered with Kotwali Police Station, Ahmednagar, District-Ahmednagar for the offence punishable under Sections 188, 272, 273, 328 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Karpe for the applicant and learned APP Mr. Kagne 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 accused - Rakeshkumar Mishra and Abhijit Late were caught red handed by the raiding team, who were found to be transporting banned Gutka / Tobacco packets on white colour Honda Activa Moped bearing No. MH-23-BD-5447. Perusal of the FIR would further show that as per the information given by accused Abhijit Late, raiding team further conducted raid at the tin shed godown situated in MIDC area, and seized more Gutka / Tobacco packets and apprehended another eight accused. It is the further prosecution story that on interrogation, accused No.6 – Shivprakash Ramkumar Tiwari and accused No.7 -Mohsin Shabbir Patel stated that they had stored and then transported the banned articles in the vehicles on the say of the present applicant. 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 were found to be storing and 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 accused No.6 - Shivprakash Ramkumar Tiwari and accused No.7 -Mohsin Shabbir Patel that they had stored and then transported the banned articles in the vehicles on the say of the present applicant. Applicant is the master mind of the crime and his call records have been collected. Therefore, custody of the applicant is required to reveal as to how he deals in such hazardous goods which are causing health problems to the public.

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. Admittedly, in the present case applicant is not the person in whose custody the banned articles were found. Name of the present applicant is not appearing in the FIR. It is the prosecution story that accused No.6 - Shivprakash Ramkumar Tiwari and accused No.7 -Mohsin Shabbir Patel had given statement they had stored and then transported the said banned articles in the vehicles on the say of the present applicant. According to the investigating agency applicant is the master mind. Call records appear to have been collected, but that cannot be the only evidence. In order to connect the present applicant with the crime, some more act was required. As to when such disclosure has been made by the co- accused, is not coming forward. It appears that accused Nos. 6 and 7 came to be arrested on 17th February 2022 and they were in police custody till 22nd February 2022. If disclosure was made by them within that period, then there ought to have been some raid on the place of business of the applicant up till now. Whatever information was gathered by the Police, has not been utilized. The said statements by co-accused have no evidentiary

value and at this stage except those statements, there is nothing in order to connect the applicant with the crime. 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, following order is passed:-

ORDER

- i) Application stands allowed.
- ii) In the event of arrest of the applicant – Satish S/o Eknath Salvi in connection with Crime No.120 of 2022 registered with Kotwali Police Station, Ahmednagar, District-Ahmednagar for the offence punishable under Sections 188, 272, 273, 328 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 Kotwali Police Station, Ahmednagar on every Monday 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.]

asb/MAR22