

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

ANTICIPATORY BAIL APPLICATION NO.317 OF 2022

Satish S/o Murari Lal Sharma

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Santosh G. Chapalgaonkar Advocate for Applicant.
Mr.A.M. Phule, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 26th APRIL, 2022

ORDER :

1. Applicant is apprehending his arrest in connection with Crime No.430 of 2021 registered with Gangakhed Police Station, District-Parbhani for the offence punishable under Sections 188, 272, 273, 328 of the Indian Penal Code and under Section 59 of the Food Safety and Standards Act.

2. Heard learned Advocate for the applicant and learned APP 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 one Noorkhan Salarkhan Pathan. It is submitted that FIR would show that accused Noorkhan was caught red handed by the raiding team, who was found to be transporting banned Gutkha / Pan Masala packets on the two wheeler which was not having any number plate. It is the further prosecution story that in all four accused persons came to be arrested and the last accused i.e. Tavef Kallu Shaikh made a statement to the police that he had purchased the Gutkha from the present applicant. That means on the basis of statement of the accused, Police want to arrest the present applicant. Learned Advocate submits that in the FIR, name of the present applicant is not mentioned, nor any role is attributed to him. There was no connecting material with the Police to connect the present applicant with the crime. His custodial interrogation is not necessary. It is also submitted that Section 328 of the Indian Penal Code is not attracted to the case as it is.

4. Per contra, the learned APP strongly opposed the application and submitted that as per the police report, the co-

accused Noorkhan was found to be transporting the banned Gutkha / Panmasala. The purpose for which Gutkha 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 another co-accused Tavef Kallu Shaikh that he had purchased the Gutkha / Panmasala from the present applicant. 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. 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. Thus, it is to be noted that on the basis of statement of co-accused, police want to arrest the applicant. The said statement of that accused 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 therefore, the interim protection granted earlier deserves to be confirmed. Hence the following order:-

ORDER

- i) Application stands allowed.
- ii) The interim protection granted to the applicant by this Court by order dated 22nd March 2022 stands confirmed. It is thus clarified that in the event of arrest of the applicant – Satish S/o Murari Lal Sharma in connection with Crime No.430 of 2021 registered with Gangakhed Police Station, District-Parbhani for the offence punishable under Sections 188, 272, 273, 328 of the

Indian Penal Code and under Section 59 of the Food Safety and Standards Act, 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, if already not released.

iii) Applicant shall remain present before the Investigating Officer 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 indulge in any criminal activity nor he should tamper with the evidence of the prosecution in any manner.

[SMT. VIBHA KANKANWADI , J.]