

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.319 OF 2022

SHAIKH MOHAMMED MAHEMOOD
VERSUS
THE STATE OF MAHARASHTRA AND ANR

...
Mr. A. R. Syed, Advocate for applicant.
Mr. B. V. Virdhe, APP for the respondents – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 22.03.2022

ORDER :-

1. Heard learned Advocate Mr. A. R. Syed for applicant. He submitted that present applicant has been falsely implicated. He had approached this Court by filing ABA No.1346 of 2021, but it was rejected. Custody of the applicant is not required at all for the purpose of investigation. There is no direct or indirect evidence against the applicant. Offence punishable under Section 328 of Indian Penal Code has not been made out. The muddemal has been already seized and therefore, nothing more is to be seized from him. The applicant is ready to abide by the terms of the bail.

2. Per contra, the learned APP submitted that he is not armed with police papers as the matter is coming for the first time. However, the

offence alleged against the applicant is serious. Applicant had approached this Court earlier and his application was rejected. It appears that he is absconding since then and, therefore, the applicant does not deserve any sympathy.

3. At the outset it is to be noted that the FIR has been lodged by Police Head Constable Balasaheb Tupsundare attached to Local Crime Branch, Parbhani. The police party had received specific information that person by name Ansari Ahmed Tayyab Mohammed Pasha, Tailor is selling contraband Gutka illegally from his house at Jodkunwa, Pathri and, therefore, the raid was arranged. Contraband Gutka and other articles worth Rs. 64,465/- were found from the said spot. The said person was arrested from the spot and in the inquiry with him, he had disclosed the name of the present applicant as the person from whom, he had purchased those contraband articles.

4. It is to be noted that this Court vide detailed order in common judgment in ABA No. 1346 of 2021 had rejected the anticipatory bail of the present applicant on 23.12.2021. There is no change in the circumstance here. Release of co-accused on regular bail cannot be the change in circumstance. It appears that after the rejection of the bail, the present applicant has not surrendered before police. It appears that he is

absconding or avoiding arrest. There is no question of waiting for papers by giving any interim relief. On account of all the above-said grounds, applicant is not entitled to get extraordinary and discretionary relief under Section 438 of Code of Criminal Procedure. Application therefore, stands rejected at the threshold.

[SMT. VIBHA KANKANWADI, J.]

scm