

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

ANTICIPATORY BAIL APPLICATION NO.352 OF 2022

Avej Khan Alidad Khan

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.M.P. Tripathi Advocate for Applicant.
Mr.A.M. Phule, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 5th APRIL 2022

DATE OF PRONOUNCING ORDER : 25th APRIL 2022

ORDER :

1. The applicant is apprehending his arrest in connection with Crime No.31 of 2022 registered with Sonpeth Police Station, Taluka-Sonpeth, District-Parbhani for the offence punishable under Sections 328, 272, 273 read with Section 34 of the Indian Penal Code.

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 that has been lodged by Assistant Police Inspector Prabhakar Gaware attached to Sonpeth Police Station, would show that on receiving secret information they have intercepted one Bolero Pickup vehicle bearing No. MH-44-9338 and apprehended one Parvej Khan Alidad Khan. It is stated that said Parvej Khan was found to be transporting banned Gutka packets in the said vehicle. It is the further prosecution story that during interrogation, the arrested accused disclosed the name of the present applicant as the person conducting the business along with him. There is no evidentiary value to the said statement and therefore physical custody of the applicant is not required for the purpose of investigation. 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 Parvej Khan was found to be transporting the banned Gutka. The purpose for which the 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 the co-accused that the applicant is his brother and he is also conducting the said business along with him and 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 generations.

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. However, it is the prosecution story that during interrogation, the arrested accused disclosed the name of the present applicant as the person conducting the business along with him. Further, it is to be noted that on the basis of statement

of co-accused, police want to arrest the present 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 as such the Application deserves to be granted. Accordingly, the following order is passed:-

ORDER

- i) Application stands allowed.
- ii) In the event of arrest of the applicant – Avej Khan Alidad Khan in connection with Crime No.31 of 2022 registered with Sonpeth Police Station, Taluka-Sonpeth, District-Parbhani for the offence punishable under Sections 328, 272, 273 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 Sonpeth Police Station 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.]