

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

ANTICIPATORY BAIL APPLICATION NO.355 OF 2022

Firoj Siddike Punjani

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Rahul R. Totala Advocate for Applicant.
Mr.S.B. Narwade, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 2nd MAY, 2022

ORDER :

1. The applicant is apprehending his arrest in connection with Crime No.349 of 2020 registered with Hingoli Rural Police Station, Hingoli, for the offence punishable under Sections 188, 272, 273, 328 of the Indian Penal Code and Sections 26(2)(iv), 27(3)(e), 30(2)(a) and 59 of the Food Safety and Standards Act, 2006 and Rules 2011.

2. Heard learned Advocate Mr. Totala for the applicant and learned APP Mr. Narwade 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 – Shaikh Bablu Shaikh Karim and Shaikh Jaker Shaikh Karim were caught red handed by the raiding team, who were found to be transporting banned Panmasala / Scented Tobacco / Gutkha packets in the Eicher Vehicle bearing No.MH-48-J-0904. It is the further prosecution story that on interrogation, said accused disclosed the name of the present applicant as the person who has loaded the said banned articles in the vehicle. That means, on the basis of the statement of the accused, the Police want to arrest the present applicant. It is submitted that the applicant was not present at the spot when raid was conducted nor the banned articles were seized from his possession. It is also submitted that Section 328 of the Indian Penal Code is not attracted to the case as it is. In the FIR, though name of the present applicant is mentioned but the same is not mentioned correctly and therefore it is submitted on behalf of the applicant that he is not the person whose name has been mentioned in the FIR. 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 Shaikh Bablu Shaikh Karim and Shaikh Jaker Shaikh Karim, were found to be transporting the banned Gutkha / Panmasala. The purpose for which the Gutkha / Panmasala 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 present applicant has also involvement in the crime and therefore, his custody 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. Though name of the present applicant is appearing in the FIR, the same is mentioned differently. In the FIR, the name of the applicant is mentioned as "Feroj Mahmad Siddiki" and therefore it is for the prosecution to prove that the person named in the FIR is none other than the applicant. It is the further prosecution story that on interrogation, apprehended accused disclosed that present applicant has also involvement in the crime. Thus, it is to be noted that on the basis of statement of co-accused, police want to arrest the applicant. There is no evidentiary value to the said statement of the co-accused 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 – Firoj Siddike Punjani in connection with Crime No.349 of 2020 registered with Hingoli Rural Police Station, Hingoli, for the offence punishable under Sections 188, 272, 273, 328 of the Indian Penal Code and Sections 26(2)(iv), 27(3)(e), 30(2)(a) and 59 of the Food Safety and Standards Act, 2006 and Rules 2011, 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 Hingoli Rural 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.]