

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

ANTICIPATORY BAIL APPLICATION NO.377 OF 2022

Shreekant Surendra Pratap Singh

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Krishna R. Singh Advocate with Mr. Sunil D. Singh
Advocate for Applicant.
Mr.A.M. Phule, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 4th MAY, 2022

ORDER :

1. The applicant is apprehending his arrest in connection with Crime No.120 of 2022 registered with Kotwali Police Station, Ahmednagar for the offence punishable under Sections 188, 272, 273, 328 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 (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 Gutkha / Scented Tobacco packets on the two wheeler bearing No.MH-23-BD-5447. It is the further prosecution story that on interrogation, another accused Shivprakash Tiwari disclosed that present applicant has also involvement in the said crime. That means on the basis of the statement of the accused, the Police want to arrest the present applicant. Learned counsel submits that in the FIR, name of the present applicant is not mentioned. The applicant was not present at the spot where the raid was conducted. There was no connecting material with the police to connect present applicant with the crime. His custodial interrogation is not necessary. It is submitted that provisions of Sections 328 of the Indian Penal Code are not attracted in the present case.

4. Per contra, the learned APP strongly opposed the Application and submitted that as per the Police report the co-accused were found to be transporting the banned Gutkha / Scented Tobacco. Learned APP further submits that call detail

reports of the mobile phones of the co-accused shows that there were frequent calls between the applicant and the co-accused. During the custodial interrogation of the co-accused, it is revealed that applicant has also involvement in the said crime. 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 FIR, however, during the interrogation it is stated that on the statement made by the accused who was apprehended, it

was disclosed that present applicant has also involvement in the said crime. Further, it is to be noted that on the basis of statement of co-accused, police want to arrest applicant. The evidentiary value to the statement of co-accused is nil and therefore, custodial interrogation of the applicant is not necessary for the purpose of investigation. So far as call details between the applicant and co-accused are concerned, 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 30th March 2022 stands confirmed. It is thus clarified that in the event of arrest of applicant – Shreekant Surendra Pratap Singh in connection with Crime No.120 of 2022 registered with Kotwali Police Station, 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.50,000/- with two solvent sureties of Rs.25,000/- each.

iii) Applicant shall remain present before the Investigating Officer on every Sunday between 10.00 a.m. to 2.00 p.m., till filing of the charge-sheet and cooperate with the investigation.

iv) Applicant shall not tamper with the evidence of the prosecution in any manner.

[SMT. VIBHA KANKANWADI , J.]

asb/MAY22