

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

ANTICIPATORY BAIL APPLICATION NO.380 OF 2022

Rushikesh S/o Rajkumar Gunjal

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.P.P. More Advocate h/f. Mr. Atul B. Hawale Advocate
for Applicant.
Mrs.Vaishali Patil-Jadhav, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 7th APRIL, 2022

ORDER :

1. Applicant is apprehending his arrest in connection with Crime No.293 of 2021 registered with Neknoor Police Station, District-Beed for the offence punishable under Sections 328, 272, 273 read with Section 34 of the Indian Penal Code.
2. Heard learned Advocate Mr. More holding for learned Advocate Mr. Hawale for the applicant and learned APP Mrs. Vaishali Patil-Jadhav 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") that has been lodged by Police Havildar – Balaji Darade attached to the Office of the Sub Divisional Police Officer, Kaij would show that on receipt of secret information, the raid was conducted at the house of Pratap Shinde, situated on Chausala to Kharda road. They had apprehended one Mangesh Wagh. It is stated that they had seized various bags containing Gutka and Pan Masala. The total worth of the muddemal seized was Rs.1,43,303/-. On the inquiry, it was revealed that those banned articles were kept there with an intention to sell. It is the further prosecution story that during investigation the arrested accused disclosed the name of Amar Gunjal from whom he purchased the said articles. It is submitted that name of the present applicant is not disclosed in the FIR, however the Investigating Officer is trying to involve the applicant in the crime under the pretext that name of the applicant is disclosed by other accused and applicant is said 'Amar Gunjal'. In fact name of the applicant is Rushikesh Gunjal and not Amar Gunjal. It is further submitted that there is no evidentiary value to the said statement of co-accused and therefore physical custody of the applicant is not

required for the purpose of investigation. It is also submitted that provisions of Section 328 of the Indian Penal Code are not attracted to the case as it is.

4. Per contra, the learned APP strongly opposed the Application and it is stated that in view of the FIR and the order passed by the learned Additional Sessions Judge while rejecting the application filed by the present applicant, the custodial interrogation of the applicant is necessary. The arrested accused Mangesh Wagh has disclosed the name of the present applicant from whom he has purchased the banned articles. The custodial interrogation is necessary to reveal as to from where the hazardous goods, which are causing health problems to the generations, were purchased.

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. In the FIR, name of one Amar Gunjal is mentioned and it is the prosecution story that present applicant is the person whose name has been disclosed by the co-accused from whom he has purchased the said banned articles. Nothing is placed on record to show that present applicant is also known as Amar Gunjal. Even otherwise, it is to be noted that on the basis of statement of co-accused, police want to arrest applicant. Statement of co-accused is inadmissible in the evidence 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. Hence, the following order:-

ORDER

- i) Application stands allowed.

- ii) In the event of arrest of the applicant – Rushikesh S/o Rajkumar Gunjal in connection with Crime No.293 of 2021 registered with Neknoor Police Station, District-Beed 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 Neknoor 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.]