

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

ANTICIPATORY BAIL APPLICATION NO.390 OF 2022

Anil S/o Bhausahab Bhojane

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Ravindra V. Gore Advocate for Applicant.
Mr.V.M. Kagne, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 18th APRIL, 2022

ORDER :

1. Present applicant is apprehending his arrest in connection with Crime No.5 of 2022 registered with Osmanpura Police Station, Aurangabad for the offence punishable under Sections 188, 273, 328 of the Indian Penal Code and under Section 59 of the Food Safety and Standards Act, 2006.

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 would show that it was registered against a person namely, Kazi Altaf Mumtaj Farooqui. It is submitted that First Information Report would show that accused – Kazi Altaf was caught raid handed by the raiding team, who was found to be transporting banned Gutka / Tobacco packets on the two wheeler vehicle bearing No. MH-23-AG-3976. It is the further prosecution story that on interrogation, said accused Kazi Altaf disclosed the name of another accused Yusuf Pathan from whom he has purchased the said banned articles. It is submitted that when accused Yusuf Pathan was apprehended, he disclosed the name of the present applicant from whom he purchased those banned articles. That means on the basis of statement of the accused, the Police want to arrest the present applicant. Learned counsel submits that in the First Information Report, name of the present applicant is not mentioned. There was no connecting material with the Police to connect the present applicant with the crime. His custodial interrogation is not necessary. 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 Kazi Altaf was found to be transporting the banned Gutka / Tobacco. 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 another co-accused Yusuf Pathan that he has purchased the banned Gutka / Tobacco from the present applicant and therefore his custody is required to reveal as to how he deals in such hazardous goods which are causing health problems to the generations. Learned APP further submits that police papers show that another three offences of similar nature have been registered against the present applicant, i.e. (I) Crime No.254 of 2020 registered with Ambad Police Station, District-Jalna for the offence punishable under Sections 188, 272, 273, 328 of the Indian Penal Code and under Sections 26, 26(2)(4), 27(2)(3), 30(2)(A) of the Food Safety and Standards Act, 2006, (II) Crime No.117 of 2021 registered with Chikalthana Police Station, District-Aurangabad for the offence punishable under Sections 188, 272, 273, 328 of the Indian Penal Code and under Sections 26, 26(2)(4), 27(2)(3), 30(2)(A) of the Food Safety and Standards Act, 2006 and, (III) Crime No.245 of 2020 registered

with Osmanpura Police Station, Aurangabad for the offence punishable under Sections 188, 273, 328 read with Section 34 of the Indian Penal Code and under Section 59 of the Food Safety and Standards Act, 2006. Learned APP submits that applicant is already facing three cases of similar nature and possibility of one more similar offence cannot be ruled out. He, therefore, prays for rejection of the application.

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 First Information Report. However, it is the prosecution story that during interrogation, the arrested accused disclosed

the name of the present applicant from whom he purchased the said banned articles. So far as the other offences registered against the applicant are concerned, the facts of those cases are not before this Court. But, certainly as regards the facts in this case are concerned, there is no direct evidence against the present applicant but on the basis of statement of co-accused, police want to arrest the present applicant. The said statement of the 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 – Anil S/o Bhausaheb Bhojane in connection with Crime No.5 of 2022 registered with Osmanpura Police Station, Aurangabad for the offence punishable under Sections 188, 273, 328 of the Indian Penal Code and under Section 59 of the Food Safety and Standards Act, 2006, 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 Osmanpura 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.]