

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.484 OF 2022

RAMIZ HAFIZ ABDUL RASHID MOAZZAN
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. S. G. Chapalgaonkar
APP for Respondent : Mr. V. M. Kagne
...

CORAM : S. G. MEHARE, J.

DATE : 05-08-2022

PER COURT :-

Heard the learned counsel for the applicant and the learned APP for the respondent State.

2. It has been alleged against the applicant that the contraband has been sold by him. However, the person, who immediately handed over the contraband, did not tell the complete name of the applicant. The applicant has a case that he has been falsely implicated in the crime. He has no business of contraband. It has been vehemently argued that Section 328 of the Indian Penal Code would not attract. Therefore, the anticipatory bail may be granted.

3. The learned APP has argued that the offence is serious. The applicant has connection with the illegal business of contraband. Hence, the police custody of the applicant is required.

4. As regards the applicability of Section 328 of the IPC in the case of prohibited Gutka, there are contradictory views of this Court. The issue has been taken to the Honourable Apex Court. The Honourable Apex Court has granted interim protection to the applicants before it. The said issue is *sub judice* before the Apex Court. So far as the allegations levelled against the applicant are concerned, the person apprehended was not able to give complete name of the applicant. Except this there is nothing against the applicant. Considering the subject of applicability of Section 328 of the IPC pending before the Apex Court, this Court is of the view that, the application deserves to be allowed. Hence, the following order :-

- i) The application is allowed.
- ii) The order granting interim protection to the applicant by this Court, dated 25.04.2022, is confirmed on the same terms and conditions of bail bonds and condition to attend the police station is relaxed.

(S. G. MEHARE)
JUDGE

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