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

920 ANTICIPATORY BAIL APPLICATION NO.503 OF 2022

SHAIKH RAUF S/O NIYAJODDIN
VERSUS
THE STATE OF MAHARASHTRA

Mr. Rohit R. Kakani, Advocate for applicant;
Ms. V.S. Choudhari, A.P.P. for respondent

CORAM : S. G. MEHARE, J.

DATE : 15th June, 2022

P.C.

1. By this application under Section 438 of the Code of Criminal Procedure, the applicant seeks his enlargement on bail, in connection with C.R. No.0098/2022, registered with police station, Gangakhed, District Parbhani, for offences punishable under Sections 328, 272, 273 read with Section 34 of the Indian Penal Code and under Section 59 of the Food Safety and Standards Act.

2. Learned Counsel for the applicant would submit that the applicant has no role to play in the offence in question. However, accused no.1 has falsely taken his name before the police during the raid, hence he has been arraigned as accused. The applicant was admittedly not present on the spot where the raid was effected. The

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applicant is a labour. Nothing is to be recovered from him. Except offence punishable under Section 328 of the Indian Penal Code, the other offences are bailable. The applicant does not know why his name is taken by accused no.1. The name of the applicant has come into light in the statement of one Aziz Khureshi. The applicant has no antecedents at his discredit. Learned Counsel also relied on the order dated 14.3.2022 passed by the learned Single Judge of this Court in Anticipatory Bail Application No.208 of 2022 (Shankar s/o. Govind Gadewar Vs. State of Maharashtra). He prayed to allow the application.

3. Learned A.P.P. has strongly opposed the application contending that the name of the applicant came into light soon after the raid. As per the first information report, the present applicant is a stockist of prohibited Gutka at Parali Vajinath from whom accused no.1 has purchased the same. The applicant is apparently engaged in the business of the sale of the product which has been prohibited by the Government of Maharashtra. There is a possibility of storing huge stock of prohibited edible Gutka. Therefore, the custodial interrogation of the applicant is required.

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4. The first information reveals that the police had set the raid on the secret information that the Gutka was being taken in a Scorpio at Shivajinagar Tanda Pati road. The person driving the vehicle fled away. However, one person sitting by the side of the driver was apprehended. On inquiry, he made a statement that he is the owner of the vehicle and goods carried in the said vehicle. The vehicle was inspected and prohibited Gutka worth Rs.70 Lakh was recovered. Immediately, the said person, namely, Aziz Khureshi narrated before the police that he purchased the said Gutka from the present applicant. Therefore, he has been arraigned as accused no. 3.

5. Learned Counsel for the applicant would submit that the application of Section 328 of the Indian Penal Code to such matters was questioned in so many cases. On the similar set of facts, this Court in the case of Shankar (*supra*) has granted protection to the applicant in the said case. The facts of that case were that the name of the said applicant came into light in the statement of the co-accused. Be that as it may, the facts of the present case are that the name of the applicant had come into light immediately after apprehending co-accused Aziz Khureshi. It has been transpired in the investigation that the so called Gutka seized by the police from

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the Scorpio owned by Aziz Khureshi was supplied to him by the present applicant. This goes to show that the applicant is a big stockist of prohibited Gutka. Whether Section 328 of the Indian Penal Code is applicable or not, is a question of investigation. However, the fact remains that the applicant is seen prima facie involved in the business of prohibited Gutka.

6. Having regard to the aforesaid facts, this Court is of the view that there is element of the involvement of the applicant in the sale of prohibited goods, i.e. Gutka, which is injurious and hazardous to public health. Such type of Gutka may be recovered by the concerned officers. The applicant being the source for the investigating officer to discover the stock maintained by the applicant and to find out who is the main distributor, the custodial interrogation of the applicant is necessary.

7. Considering the aforesaid facts of the case, this Court is not inclined to grant anticipatory bail to the applicant. In view thereof, the application stands rejected.

(S. G. MEHARE, J.)

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