

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.774 OF 2022

YOGESH KADUBA WALWALE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Sohail Subhedar h/f.
Mr. Nilesh S. Ghanekar
APP for Respondent : Mr. S. B. Narawade
...

CORAM : S. G. MEHARE, J.

DATE : 22-07-2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent/State.
2. A raid was taken by the first informant at two places. On the same day, the complainant seized some contraband from the co-accused. The prosecution has a case that the applicant/co-accused Rais was possessing a contraband packaging machine. The police have also seized the said machine. He was arrested and during the interrogation, he has stated to the police that the present applicant is his partner.
3. The learned counsel for the applicant would submit that there is nothing against the applicant except the statement of the co-accused which is not admissible in evidence. The applicant has

no good terms with the co-accused. Both are the residents of the same locality. The prosecution has nothing to recover from the applicant. The alleged packaging machine has already been seized. The prosecution has also collected the CDR. The offence under Section 328 of the Indian Penal Code is not applicable. Therefore, the applicant may be granted pre-arrest bail.

4. The learned APP has strongly opposed the application and submitted that two crimes are to the discredit of the applicant for the offence punishable under Section 135 of the Maharashtra Police Act and Section 325 of the Indian Penal Code. Hence, prayed for rejection of the application.

5. Perused the papers placed by the learned APP. It appears that the complainant has taken two raids on the same day at different places. In second raid, the complainant found packaging machine. It was recovered. The bill of packaging machine was also recovered. The co-accused Pathan was in police custody and from his mouth it was transpired that the applicant is his partner. In addition to this, the prosecution has also evidence of CDR. The issue as regards the applicability of Section 328 of the Indian Penal Code in the cases of prohibited Gutka/Pan Masala in the State of Maharashtra is *sub-judice* before the Honourable Apex Court. However, in the case of Pathan Shafi Khan Rahemat Khan Versus the State of Maharashtra (A.B.A.No. 1405 of 2021, etc.), this Court

took a view in its order dated 23.12.2021 that in such cases Section 328 of the IPC would attract.

6. Be that as it may, the facts are very specific that one of the co-accused disclosed the police that the present applicant is his partner. The material investigation is the recovery of machine allegedly used for packaging the prohibited Gutka has already been seized. Therefore, no purpose would be served if the applicant is sent for custodial interrogation. In the peculiar facts of the case, the application deserves to be allowed. Hence, the following order -

- i) The application is allowed.
- ii) In the event of arrest, applicant Yogesh s/o. Kadhuba Walwale be released on bail, on executing PB and SB of Rs.20,000/- with one solvent surety of like amount, in C. R. No. 0142 of 2022, registered with Pishor Police Station, District Aurangabad, for the offence punishable under Sections 272, 273, 328, 188 of the Indian Penal Code and Section 59 of the Food Safety and Standards Act 2006; on the condition that, the applicant shall attend the police station from 26.07.2022 to 29.07.2022, between 10.00 a.m. and 1.00 p.m. He shall not tamper with the prosecution witnesses. He shall co-operate with the investigation.

(S. G. MEHARE)
JUDGE