

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

915 ANTICIPATORY BAIL APPLICATION NO.821 OF 2022

RATILAL KALSHA VASAVE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Amit S. Savale
APP for Respondent : Mr.S.B.Narwade

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CORAM : S. G. MEHARE, J.

DATE : 21st July, 2022

PER COURT :-

1. 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 on the secret information that the applicant was manufacturing country liquor behind his house, the Police raided his house at about 8.40 pm. However, the applicant learnt that Police were coming. He saw the Police, therefore, he started running from the spot of the incident. He was allegedly manufacturing the country liquor unauthorizedly. Police also chased him but took advantage of the dark, and he fled away. It has been alleged that the Police searched the said place, which was a lonely house, and found a fibre container containing a 50-litre spirit, worth Rs.15,000/-, lying there, which is harmful to human life. That spirit was used to manufacture duplicate country liquor. On the basis of these

facts, a crime has been registered against the applicant under Section 65(e) of the Maharashtra Prohibition Act and under Section 328 of the Indian Penal Code ("I.P.C." for short).

3. The learned counsel for the applicant has vehemently argued that the case under Section 328 of the I.P.C. is not made out. To bolster his argument, he relied on the order of this Court in the case of *Bhimrao Fula Rathod vs. The State of Maharashtra* (Anticipatory Bail Application No.553 of 2020, decided on 10th August, 2020). In that case, the prosecution's case was that the applicant was selling liquor at his hut. The next case he relied upon is *Govind s/o Dharamvir Ridla vs The State of Maharashtra* (Anticipatory Bail Application No.741 of 2020, decided on 19th September 2020). In that case, the prosecution had a case that the applicant was selling the liquor during the lockdown period, and an unauthorized stock of country liquor was found in a hut. He also relied on the case of *Shankar s/o Sukhdeo Roy vs The State of Maharashtra* (Criminal Application (ABA) No.268 of 2021 with another Anticipatory Bail application decided on 11th June 2021 at Nagpur Bench). The facts of this case were that the stock of liquor was found in the house of the applicant.

4. In the above cases, the facts were similar that the accused were selling the liquor unauthorizedly. None of the accused was allegedly using the spirit for manufacturing the liquor unauthorizedly. The above cases are distinguishable on the facts.

5. The learned counsel for the applicant has submitted that Section 328 of the I.P.C. and Section 65(e) of the Maharashtra Prohibition Act would not apply in this case. He may be right in pointing out that the prosecution has applied the wrong Sections under the Maharashtra Prohibition Act. Instead of Section 65(e) of the Maharashtra Prohibition Act, it may be Section 65(b).

6. Let us examine Section 328 of the I.P.C. The section is in chapter XV of the I.P.C. titled "Of Offences Affecting the Human Body". The offence under this section may be committed by administering any poisonous substance to any person or by causing to be taken by any person any poison or substance described in the said section. Such an act would be with intent to cause hurt. In the second part, that may be committed by having knowledge that likely to cause hurt by taking such poisonous substance. Two acts complete the offence under this section. The first is an act done with intention, and the second is done with the knowledge of the consequences. However, the terms 'intention and knowledge' have distinct meanings. The difference between knowledge and intention is that intention to commit a crime is seen from the acts a person commits, and knowledge is a possible information of the consequences of an act. The Hon'ble Apex Court in the case of *Kesar Singh V State of Haryana [(2008) 15 SCC 753]* has distinguished the difference in Knowledge and intention in the following words; Knowledge means consciousness or realization or understanding.

The distinction between the terms 'knowledge' and 'intention' again is a difference of degrees. An inference of knowledge that it is likely to cause death must be arrived at keeping in view the fact situation obtaining in each case. The accused must be aware of the consequences of his act.

"Knowledge denotes a bare state of conscious awareness of certain facts in which the human mind might itself remain supine or inactive whereas intention connotes a conscious state in which mental faculties are roused into activity and summed up into action for the deliberated purpose of being directed towards a particular and specific end which the human mind conceives and perceives before itself."

7. To attract section 328 of I.P.C., the person must have knowledge that taking such poisonous substance described in the section likely to cause hurt to the other person. Therefore, a person who knows the consequences of consuming such substance causes hurt, either administers or causes to be taken such substance by any person is an offence punishable under this section.

8. No doubt, selling the liquor unauthorizedly without intent or knowledge to cause hurt to any person may not attract Section 328 of the I.P.C. It is settled law that anything done without intention and knowledge is no offence. Selling and manufacturing liquor unauthorizedly are apparently different

acts. The seller may not know what is added to the liquor, but the manufacturer must know what is added. Manufacturing of liquor requires a licence from the Government. As far as the liquor ingredients are concerned, the standards are fixed and tested by Government Laboratories. The Government controls its manufacturing with utmost care that consuming liquor shall not cause hurt to the consumer. Manufacturing the liquor without following standard norms and licence is prohibited.

9. Here, in the case in hand, it has been specifically alleged that the applicant was using spirit, which is harmful to human life. The spirit the applicant used has no approved standard, and he has no scientific knowledge of manufacturing liquor. His sole object was to attract the consumers making it hard by adding the harmful spirit. Scientifically the negative sides of spirit are that it causes high blood pressure, heart disease, breast cancer, it affects liver, etc. That weakens the immune system and increases the chances of getting sick. It also creates learning and memory problems. The applicant has no reason to store such a huge quantity of untested spirit. Hence it can safely be said that the applicant was manufacturing the liquor for sale. The consumer may not know the contents. It was the responsibility of the manufacturer not to add such substances which are harmful to human life. The allegation against the applicant is that he was adding spirit for manufacturing the liquor unauthorizedly without making its contents public. Adding such untested and harmful

spirit to the liquor falls under the term “other thing” as incorporated in Section 328 of the I.P.C.

10. So far as the manufacturing of the liquor unauthorizedly is concerned, punishment is prescribed under Section 65 of the Maharashtra Prohibition Act.

11. The learned counsel for the applicant has correctly pointed out that the case regarding the applicability of Section 328 of the I.P.C. is pending before the Hon’ble Apex Court regarding its applicability to the cases of consuming, selling, and storing the Gutkha in the State of Maharashtra.

12. Considering the business of the applicant manufacturing liquor unauthorizedly by adding untested and harmful spirit is a situation to infer the knowledge of causing hurt to the other person. The applicant was doing such an act with the knowledge that consuming such liquor has the consequences of causing hurt. Therefore, at this juncture, the arguments of learned counsel for the applicant in a given facts that section 328 of I.P.C. would attract can not be accepted.

13. There appears a substance in the argument advanced by the learned APP for the respondent-State that the applicant was storing the spirit to use for manufacturing liquor unauthorizedly, which may cause hurt to the life of the consumer. Therefore, the

custodial interrogation of the applicant is essential to know who is the supplier of such spirit and how much stock he has stored at different places. Considering the gravity of the offence committed by the applicant, life of many innocents may be in danger, and those must be saved. Therefore, also the custodial interrogation of the applicant is essential.

14. For the reasons stated above, the application stands dismissed.

(S. G. MEHARE)
JUDGE

SPT