

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

19 ANTICIPATORY BAIL APPLICATION NO.1020 OF 2022

HANAMANTU VISHVANATH BEHARE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Shaikh R R.
APP for Respondents-State : Mr. S. B. Narwade.

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CORAM : S. G. MEHARE, J.
DATE : 29.08.2022

PER COURT :-

1. Heard the learned counsel for the applicants and learned APP for the respondents-State.
2. The learned counsel for the applicants would submit that the applicants are not apprehended on the spot of the incident. They are not the supplier of the *Gutka*. However, they have been falsely implicated in the crime. Except Section 328 of the IPC, all other sections are bailable. Section 328 would not attract. Hence, they may be granted anticipatory bail.
3. Learned APP has vehemently opposed the application contending that applicant No.2 was repeatedly involved in the same nature of crime. There are contradictory views as

regards the application of Section 328 of the IPC. Therefore, application may be dismissed.

4. It is not in dispute that there are contradictory views of this Court as regards the applicability of Section 328 of the IPC in the cases of *Gutka*. The said issue is seized with the Hon'ble Supreme Court. The Hon'ble Supreme Court has granted the interim protection of all the applicants who approached the Hon'ble Supreme Court. Considering the allegations against the applicants that they are the supplier, and the question of applicability of Section 328 of the IPC is seized with the Hon'ble Supreme Court, the applicants have a good case for anticipatory bail. Hence, the following order :

ORDER

- (i) The application is allowed.
- (ii) The interim protection granted to the applicants by the order dated 17.08.2022 stands confirmed on the same terms and conditions with an additional condition that the applicants shall attend the Police Station as and when called by the Investigating Officer on written notice.

(S. G. MEHARE, J.)

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vmk/-