

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

ANTICIPATORY BAIL APPLICATION NO.1073 OF 2022

1. Dipak Datta Bhumkar
2. Sandeep Datta Bhumkar ...Applicants

Versus

The State of Maharashtra ...Respondent

...
Advocate for Applicants : Mr. Borulkar Avinash R.
APP for Respondent/State : Mr. V.M. Kagne

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

DATED : 30th AUGUST, 2022

PER COURT:-

1. Heard learned counsel for the applicants and learned APP for the State.
2. Learned counsel for the applicants would submit that the applicants have not been named in the FIR, however, co-accused named them as suppliers. The applicants have no concern with the said Gutka. The offence under Section 328 of the Indian Penal Code would not attract. The Gutka has already been seized, therefore, the custodial interrogation of the applicants is not essential.
3. Learned APP has opposed the application contending that there are three antecedents to the discredit of both the applicants. There are contradictory views of this Court as regards the applicability of Section 328 of the Indian Penal Code. Therefore, Section 328 of

the Indian Penal Code would attract. He has also fairly conceded that the issue as regards the applicability of Section 328 of the Indian Penal Code in the case of Gutka is seized with the Hon'ble Supreme Court. The Hon'ble Supreme Court granted interim protection to the applicants approached to it.

4. Perused the application. The applicants have not been named in the FIR, however, their names have been transpired from the co-accused. Except the statements of co-accused, there is nothing against the applicants. That apart, the Gutka was seized from the spot of incident. The issue as regards the applicability of Section 328 of the Indian Penal Code in the case of Gutka, is seized with the Hon'ble Supreme Court. In view of the facts of the case, the application deserves to be allowed. Hence, the following order :

ORDER

(A) The Application is allowed.

(B) In the event of arrest, the applicants, Dipak Datta Bhumkar and Sandeep Datta Bhumkar, be released on anticipatory bail, on executing P.B. and S.B. of Rs.25,000/- (Twenty Five Thousand) each with one solvent surety in the like amount in Crime No.209 of 2022 registered with Chikalthana Police Station, District Aurangabad for the offence punishable under Sections 328, 188, 272, 273 r/w 34 of the Indian Penal Code and Section 26, 26(2)(iv), 27(3)

(3)

(e) and 59 of Food Safety and Standard Act, on the condition that they shall attend the police station as and when called by the Investigating Officer on written notice and shall not tamper with the prosecution witnesses.

(S.G. MEHARE, J.)

Mujaheed//