

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

ANTICIPATORY BAIL APPLICATION NO.1127 OF 2022

ABHAY RAMESHWAR REZA @ GUPTA
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Ms. Kulkarni Rashmi S.
APP for Respondent/State : Ms. V.S. Choudhari
...

CORAM : S.G. MEHARE, J.

DATED : 07th SEPTEMBER, 2022

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. Learned counsel for the applicant would submit that Section 328 of the Indian Penal Code would not attract. The remaining offences registered against the applicant are bailable. Nothing is to be recovered from the applicant. Hence, anticipatory bail may be granted.
3. Learned APP has strongly opposed the application contending that the applicant has played an active role in committing the crime. However, she has conceded that the issue as regards the applicability of Section 328 of the Indian Penal Code, is seized with the Hon'ble Supreme Court. The Hon'ble Supreme Court has granted the interim protection to the applicants approached to it. There are

contradictory views of this Court as regards the applicability of Section 328 of the Indian Penal Code.

4. The applicant runs a grocery shop in the State of Madhya Pradesh. The Gutka sale and store is not prohibited there. Therefore, it would be difficult to accept that he may be booked for the offences registered against him. On merit also, the applicant has a good case for anticipatory bail. Hence, the following order :

ORDER

(A) The Application is allowed.

(B) Interim protection granted to the applicant by order dated 23.08.2022 is confirmed on the same terms and conditions. However, the condition to attend the police station as and when called by the Investigating Officer stands vacated.

(S.G. MEHARE, J.)