

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1262 OF 2022

VISHALKUMAR VIJAYBHAI PANCHAL
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Ruchir S. Wani
APP for Respondent : Mr. S. B. Narwade
...

CORAM : S. G. MEHARE, J.

DATE : 03-10-2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent at length.
2. The applicant has a case that he is not a proprietor of Ekta Enterprises, Vapi, Gujrat. However, he is its employee. He is following the orders of the employer. As per directions of his employer, he loaded 108 parcels of Tobacco to be delivered at Raipur in the State of Chattisgarh. The truck was going to Raipur by National Highway. Truck had to cross the entire State of Maharashtra to reach Chattisgarh. However, the police under misconception of law have stopped the vehicle and on the basis of the statement of the driver, he has been arraigned as an accused. In fact, the tax invoices were with him, but police did not allow him to produce. Referring to tax invoice, he would submit that the goods were loaded for Raipur and not for the State of Maharashtra.

The prosecution has no *prima facie* evidence that the tobacco is prohibited to be transported through the State of Maharashtra. Before reaching the destination, the police have registered a false case. Be that as it may, the applicant is not the owner of the alleged tobacco nor he directed to offload the said tobacco in the State of Maharashtra. Section 328 of the Indian Penal Code would not attract in the cases of prohibited tobacco and the issue as regards the applicability of Section 328 of IPC is seized with the Honourable Supreme Court.

3. The Honourable Division of this Court Bench at Nagpur, in a case ***Mohammad Naik and others - 4 Vs. the State of Maharashtra and another (Criminal Writ Petition No. 543 of 2020, dated 09.01.2021)*** rejected the prayer to quash the order dated 15.07.2020 issued by the respondent No.2, the Food Safety Commissioner, Food and Drugs Administration, Maharashtra State, passed under Section 30(2)(a) of the Food Safety of the Food and Standards Act, 2006, to the extent it prohibits transport of banned products such as tobacco, Pan Masala, etc. from one State to another through the State of Maharashtra.

4. The Honourable Division Bench was pleased to dismiss the writ petition with observations that though inter-State transport would be permissible, the State Authorities would be within their rights, to seize the goods, which are prohibited within the State, so

as to ensure that they are not offloaded in the State of Maharashtra under the guise of inter-State transport, with a view to enforce the prohibition within the State and curb black marketing of such goods within the State.

5. The learned A.P.P. has also referred to the statements of the warehouse owner and the transporter and has vehemently argued that *prima facie* material is available against the applicant showing his involvement as a supplier of prohibited tobacco. He also argued that the investigating agency wanted to know how many times such tobacco was transferred through the State of Maharashtra.

6. The learned counsel for the applicant in reply would submit that the truck was going through the shortest route to the State of Chattisgarh. The invoice supports the contention of the applicant as to the quantity loaded from Vapi, State of Gujrat to be transported to the State of Chattishgarh, where the Gutka is not prohibited. He placed on record an appointment letter of the applicant with Ekta Enterprises. He has referred to the GST invoice showing that one Gulab Singh Rajawat is the owner of the company, who runs the business of tobacco. He prayed to allow the application.

7. As far as the applicability of Section 328 of the IPC is concerned, the said issue has been seized with the Honourable

Supreme Court and the persons approached to the Honourable Supreme Court have been granted interim protection.

8. The papers reveal that the applicant was never the owner of the alleged tobacco nor the proprietor of the company doing the business of tobacco. The statement of transporter supports his contention that the tobacco was loaded for transport to the State of Chattisgarh. It is not in dispute that the road on which the action taken was National Highway No.6 and it was the shortest route to reach the State of Chattisgarh. In the absence of any concrete evidence against the applicant that he had concern with the alleged tobacco, it would be inappropriate to send him behind the bar. The papers produced on record show that he was the employee of Ekta Enterprises and the loaded tobacco to be transported to the State of Chattisgarh.

9. In view of the facts discussed above, the Court is of the view that the application deserves to be allowed.

- i) The application is allowed.
- ii) The *interim* protection granted to the applicant by the order dated 26.09.2022 is confirmed on the same terms and conditions.

**(S. G. MEHARE)
JUDGE**