

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1511 OF 2021

MANGAL S/O HIMMATSING PAWARA

VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. R. S. Wani

APP for Respondent-State : Mr. A. M. Phule

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CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 24-01-2022.

ORDER :

1. The applicant is apprehending his arrest in connection with Crime No.364 of 2021, registered with Dhadgaon Police Station, District Nandurbar, for the offence punishable under Section 65(e), 108 of the Maharashtra Prohibition Act, 1949.
2. Heard learned Advocate Mr. R. S. Wani for applicant and learned APP Mr. A. M. Phule for respondent-State.
3. It has been vehemently submitted on behalf of the applicant that

the FIR has been lodged by police constable Rajendra Kashinath Chromale. They had intercepted vehicle No.GJ-16/W-8554 at about 03.45 am. On 13-09-2021 which is on the basis of the tip of and they could find foreign liquor bottles in boxes. The driver of the vehicle could not produce the permit to transport and the driver whose name was Malsing Utrya Padavi told that he has brought the bottles from present applicant. Except the said statement, there is nothing against the present applicant. Statement of the co-accused cannot be believed, and therefore, the applicant deserves to be released on bail. He is ready to abide by the terms of the bail.

4. Reliance has been placed on the orders passed by this Court in *Shri Murli Vitthal Shetty Vs. The State of Maharashtra, ABA No.277 of 2019, dated 14-03-2019*, to show that statement of the co-accused being inadmissible, the application can be granted. On the similar lines this Court had given anticipatory bail to applicant in *Dattatray Mahalu Gaikwad Vs. the State of Maharashtra, ABA No.101 of 2021, dated 19-03-2021*, and also in *Amit s/o Ram Zende Vs. The State of Maharashtra and Anr., ABA No.556 of 2020, decided on 13-08-2020*, wherein after relying upon the decision in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra, reported*

in 2011 (1) Supreme Court Cases 694, this Court had granted the bail.

5. Per contra, the learned APP strongly opposed the application. It was submitted that in all 100 boxes containing 12 bottles in each box of brand McDowell's No.1 Superior Whiskey, total valuing Rs.9 lakh were seized. As against the present applicants many similar offences have been lodged and the present applicant is on bail in those matters.

6. At the outset, it is to be noted that the seizure of the articles is by police after they had received the tip of, and at the spot, the material worth Rs.9 lakh has been seized. The driver has disclosed to the police name of the present applicant as a person who had called the material. That means, he had ordered for the same. No doubt, the statement of co-accused may not be admissible in evidence, however, the fact will have to be investigated as to on whose directions the material was being transported, where it was to be taken etc. The investigation is still in progress. Further it appears that the present applicant is involved in similar offences and he is on bail in those offences. If on bail he can commit this crime, then this will not be the fit case to grant anticipatory bail by

exercising the extraordinary powers of this Court. The decisions on which the applicant is relying, is not directly on this point that when on bail in similar offence the applicant can be released anticipatory bail. Under these circumstances, this Court is not inclined to grant relief as prayed by the applicant. The application, therefore, stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-