

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

ANTICIPATORY BAIL APPLICATION NO.1546 OF 2021

Baswaraj S/o Vishwanath Agre

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Vikrant S. Valse Advocate h/f. Mr. T.V. Venjane
Advocate for Applicant.
Mr.B.V. Virdhe, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 17th MARCH, 2022

ORDER :

1. Applicant is apprehending his arrest in connection with Crime No.154 of 2021 registered with Aurad Shahajani Police Station, Taluka-Nilanga, District-Latur for the offence punishable under Sections 328, 188, 272, 273 of the Indian Penal Code and under Sections 26 (2) (i) (ii) (iv), 30 (2) (a) and Section 59 of the Food Safety and Standards Act.

2. Heard learned Advocate Mr. Vikrant Valse holding for learned Advocate Mr. T.M. Venjane for the applicant and learned APP Mr. B.V. Virdhe for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that perusal of the First Information Report that has been lodged by Food Safety Officer, Latur would show that on receiving information, Assistant Police Inspector, Aurad Shahajani Police Station, visited the spot and seized certain packets of Vimal Pan Masala, V-1 Tobacco etc. from the possession of the applicant. The total worth of the muddemal seized was Rs.7650/-. It is submitted that provisions of Section 328 of the Indian Penal Code are not attracted in the present case. The Police already conducted the Panchnama and seized the articles and therefore, custodial interrogation of the applicant is not necessary.

4. Per contra, the learned APP strongly opposed the application and submitted that the applicant was found possessing banned Gutka / Tobacco articles. Applicant was very well having knowledge that Gutka is banned in State of Maharashtra and the said decision has been taken in the interest of public health. From the possession of the applicant the articles

have been seized which are banned. The custodial interrogation of the applicant is necessary to reveal as to from where the hazardous goods, which are causing health problems to the generations, were purchased.

5. Learned Advocate for the applicant tried to submit that offence under Section 328 of the Indian Penal Code will not be attracted in this case as the person was not present before accused person who could be administered poisonous substance. In support of his submissions, learned Advocate relied on the decision by this Court in ***Anticipatory Bail Application No.944 of 2020*** with companion matters, decided on 30th September 2021 (**CORAM : V.G. BISHT, J.**), whereby in similar situations the applicants therein who have been arrested holding or possessing Gutka, have been released on anticipatory bail, holding that offence under Section 328 of the Indian Penal Code has not been made out. In this regard, it will not be out of place to mention that this Court in ***Anticipatory Bail Application No.1530 of 2021***, vide order dated 12th January 2022, has given detailed reasons as to how Section 328 of the Indian Penal Code can be invoked in such types of cases.

6. In spite of the fact that in such cases offence under Section 328 of the Indian Penal Code can be invoked, now the facts of the present case are required to be considered. Perusal of the First Information Report would disclose that the same has been lodged by Vitthal Londe, Food Safety Officer, Latur on 18th August 2021, which has a reference of the letter issued by Assistant Police Inspector of Aurad Shahajani Police Station, District-Latur dated 17th August, 2021. In the said letter, it was informed that the Police had seized banned articles from the possession of the applicant on 15th August 2021. If the Police had gone to the spot and seized the articles from the custody of the applicant, what prevented them from arresting the applicant is a question. Further, it is to be noted that though it is stated in the First Information Report that the Police had seized the banned articles from the custody of the applicant on 15th August 2021, till present applicant had filed application for anticipatory bail on 24th August 2021 and even after its rejection by the learned Additional Sessions Judge, Nilanga on 14th September 2021, the Investigating Officer had never conducted raid at the place of the present applicant to find out whether more banned articles were in possession of the applicant. Thus, it appears that custodial interrogation of the present applicant is not necessary

for the investigation. The investigation can still go on if the attendance is directed to be given and therefore, the interim protection granted earlier deserves to be confirmed. Hence the following order is passed:-

ORDER

- i) Application stands allowed.
- ii) The interim protection granted to the applicant by this Court by order dated 3rd March 2022 stands confirmed. It is thus clarified that in the event of arrest of the applicant – Baswaraj S/o Vishwanath Agre in connection with Crime No.154 of 2021 registered with Aurad Shahajani Police Station, Taluka-Nilanga, District-Latur for the offence punishable under Sections 328, 188, 272, 273 of the Indian Penal Code and under Sections 26 (2) (i) (ii) (iv), 30 (2) (a) and Section 59 of the Food Safety and Standards Act, he be released on bail on PR Bond of Rs.30,000/- (Rupees Thirty Thousand) with two sureties of Rs.15,000/- (Rupees Fifteen Thousand) each, if already not released.
- iii) Applicant shall attend Aurad Shahajani Police Station, District-Latur on every Friday between 10.00 a.m. to 2.00 p.m.

till filing of the charge-sheet and co-operate with the investigation.

iv) Applicant shall not tamper with the evidence of the prosecution in any manner.

[SMT. VIBHA KANKANWADI , J.]

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