

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 ANTICIPATORY BAIL APPLICATION NO.1554 OF 2021

VICKEY @ VIJAY HOTCHAND TILLANI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Applicants : Mr. Kakade Amol N .
APP for Respondents – State : Mr. N. T. Bhagat

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04.01.2022

ORDER :-

. Present applicant is apprehending his arrest in connection with Crime No.334 of 2021 registered with Muktai Nagar Police Station, Dist. Jalgaon for the offences punishable under Sections 272, 273, 328 of Indian Penal Code.

2. Heard learned Advocate Mr. A. N. Kakade for the applicant and learned Advocate Mr. N. T. Bhagat for respondents – State.

3. Perusal of the FIR, which has been lodged by police officer – Manoj Dusane attached to the Special Cell, would show that on the basis of secret information, he and his police party had intercepted a Mahindra Bolero and after its inspection, in presence of two panchas, they have found contraband Gutkha with scented Pan Masala worth

Rs.14,96,000/-. It was under the name Vimal Pan Masala. The driver and cleaner were arrested on the spot. Further, on inquiry with them, they could found out that the vehicle belongs to one Mahesh Ashok Pandav, who was driving the vehicle at the relevant time and the FIR itself contains the statement of said Mahesh Ashok Pandav that he had purchased the articles from the present applicant for the purpose of selling it.

4. The applicant has produced on record the license given by Government of India and the Food and Drugs Administration, Madhya Pradesh for storing and selling of Vimal Pan Masala. The tax invoice has produced as well as e-way bill is also produced. Learned Advocate for the applicant submits that selling of Gutkha is not prohibited in Madhya Pradesh and this position is also accepted by learned APP. The question then remains that if he can sell the articles in Madhya Pradesh, then how it will amount to an offence under Sections 272, 273 of Indian Penal Code in Maharashtra. Further, whether Section 328 of Indian Penal Code would be attracted as against the present applicant when there was no customer present immediately in presence of this applicant is also a question and in view of *Joseph Kurian, Philip Jose Vs. State of Kerala [(1994) 6 SCC 535]* whether it amounts to an offence or not will be gone into by the trial Court at the time of framing charge. Further,

that point is also sub-judice, as it is stated by the learned Advocate appearing for the applicant, before the Hon'ble Supreme Court. Under the said circumstance, case is made out to grant protection to the applicant. Hence, the following order :-

ORDER

- I) Application stands allowed.
- II) In the event of arrest of the applicant – Vickey @ Vijay s/o Hotchand Tillani in connection with Crime No.334 of 2021 registered with Muktai Nagar Police Station, Dist. Jalgaon for the offences punishable under Sections 272, 273, 328 of Indian Penal Code, he be released on P. R. Bond of Rs.30,000/- with two sureties of Rs.15,000/- each.
- III) The applicant shall remain present before the investigating officer on 10.01.2022, 25.01.2022, 07.02.2022, 18.02.2022 i.e. on above dates or till the investigation is complete. It should not be beyond 18.02.2022.
- IV) He shall not tamper with the evidence of the prosecution
- V) He shall cooperate with the investigation.

[SMT. VIBHA KANKANWADI, J.]