

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1730 OF 2021

Nasir Mohammedail Yeligar

Applicant

Versus

The State of Maharashtra

Respondent

Mr. R.A. Jaiswal, Advocate holding for Mr. S.S. Chapalgaonkar,
Advocate for the applicant.

Mr. G.O. Wattamwar, APP for respondent/State.

CORAM : M.G. Sewlikar, J.

DATE : 24th JANUARY, 2022.

PER COURT :

1. This an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No. 0467/2021 registered with Karmad Police Station, Aurangabad for the offences punishable under Section 188, 272, 273, 328 of the Indian Penal Code and under Sections 59, 26(1), 26(2)(iv), 27(3)(e), 30(2)(a) of Food Safety and Standards Act, 2006.

2. It is alleged in the First Information Report that on 6th December, 2021, at 1.00 pm, banned food articles i.e. 'Najar 9000 Gutkha' was found being carried in Eishar Truck bearing No. MH 04

JK 3615. In the said truck, 83 gunny bags containing 56 pouches in each bag, total 28303 pouches worth Rs.70,75,750/- were found. The State of Maharashtra has banned all forms of Gutkha. Therefore, applicant, who is a driver of Eicher Truck, was arrested. Intimation of seizure of banned articles was given to the concerned police station. On the basis of report filed by the Food Safety Officer, First Information Report came to be lodged under the aforesaid sections.

3. Learned counsel Shri Jaiswal submits that Section 328 of the Indian Penal Code cannot be attracted in the present case as the applicant is a driver and he was not aware of the contents of the gunny bags which were loaded in the truck. He further submits that under Section 328 of the Indian Penal Code, what is to be seen is whether any drug, stupefying substance, poison etc. was administered. Since such is not the case of the prosecution, applicant is entitled to be released on bail.

4. Learned APP Shri Wattamwar submits that Division Bench of this Court has taken a view that Section 328 of the Indian Penal Code can be applied in such cases. He further submits that

applicant was carrying 'Najar 9000 Gutkha' in the truck driven by him. In the statement recorded by police, applicant has stated that he was aware of the contents of the cartons i.e. 'Najar 9000 Gutkha'. He submits that he was carrying these articles with intent to hurt to the persons who will consume these banned substances. Learned APP further submits that these banned substances are produced out of Maharashtra. Applicant was carrying these banned substances with the knowledge that they are banned substances and, therefore, he is liable to be prosecuted under Section 328 of the Indian Penal Code.

5. It is not in dispute that 'Gutkha' is banned in the State of Maharashtra. Charge-sheet is filed. So far as question as to whether Section 328 of the Indian Penal Code can be invoked in such cases is concerned, this question is subjudiced before the Honourable Supreme Court. So far as applicant is concerned, there is nothing on record to show that he is an employee of the company which produces this 'Gutkha' or he is an employee of the supplier of 'Gutkha'. Therefore, applicant cannot be imputed with the knowledge or with the intent that he was carrying banned substance i.e. 'Gutkha'. Moreover, the offence is not punishable with death or

imprisonment for life. It is punishable with imprisonment for 10 years. All the other offences are bailable. In this view of the matter, I am inclined to release the applicant on bail. Hence the following order :-

ORDER

- i) Application is allowed.
- ii) Applicant be released on PR Bond of Rs.25,000/- (Rs. Twenty Five Thousand) with one local solvent surety in the like amount in connection with Crime No. 0467/2021 registered with Karmad Police Station, Aurangabad for the offences punishable under Section 188, 272, 273, 328 of the Indian Penal Code and under Sections 59, 26(1), 26(2)(iv), 27(3)(e), 30(2)(a) of Food Safety and Standards Act, 2006, on condition that he shall not pressurise the witnesses, shall not tamper with the prosecution evidence and that he will attend the trial regularly.
- iii) Application stands disposed of.

(M. G. SEWLIKAR)
Judge