

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1697 OF 2022

Shaikh Azimoddin S/o Shaikh Khamruddin Applicant

Versus

The State of Maharashtra
and another Respondents

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Mr. Dhananjay M. Shinde, Advocate for the Applicant

Mr. N.T. Bhagat, APP for Respondents – State

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 22nd December, 2022

ORDER :

1. The applicant apprehends his arrest in connection with Crime No. 0386 of 2022 registered with Vazirabad Police Station, District Nanded for offences punishable under sections 26, 17, 30(2)(a) and 59 of Food Safety and Standards Act, 2006, and sections 188, 272, 273, 328 read with 34 of the Indian Penal Code.

2. Food Safety Officer lodged FIR pursuant to the raid conducted on the shop owned by the applicant, wherein huge quantity of the contraband articles worth Rs.74,11,350/- was seized.

3. Heard learned advocate for the applicant/s and learned Additional Public Prosecutor for the State. Perused the papers of the investigation.

4. Learned advocate for the applicant strenuously submits that section 328 of the Indian Penal Code is not applicable in the present case. He further submits that in similar situation, this Court has granted anticipatory bail to the accused therein. He has placed on record copy of order dated 08/12/2022 passed in anticipatory bail application No. 1345 of 2022. He, therefore, submits that applicant deserves protection.

5. Learned Additional Public Prosecutor has strongly opposed the bail application, contending that huge quantity of prohibited articles is seized from the shop of applicant. Similar offence is registered against the applicant in the past, and in that crime, applicant was denied anticipatory bail by the Sessions Court. Applicant is habitual in dealing with the contraband articles. Hence, discretionary relief may not be granted to the applicant.

6. During the raid on the shop of the applicant, following prohibited articles were seized.

- (i) 43 big bags of Goa 1000 Gutkha containing total 14190 packets worth Rs.36,89,400/-.
- (ii) 3 big bags of Fire Gutkha containing 750 packets worth Rs.2,25,000/-.
- (iii) 60 big bags of Musafir Pan Masala containing 12000 packets worth Rs.23,04,000/-.
- (iv) 60 big bags of M-4 scented tobacco containing 12000 packets worth Rs.3,60,000/-.
- (v) 6 big bags of Signature Pan Masala, each containing 3 boxes and 15 packets and 1080 small carton packets worth Rs.3,45,600/-.
- (vi) 30 tin boxes of UK Jafrani Jarda worth Rs.19,350/-.
- (vii) 4 big boxes of R.M.D. Pan Masala, each containing 50 packets worth Rs.96,000/-.
- (viii) 4 big boxes of M scented tobacco containing 50 packets worth Rs. 72,000/-.
- (ix) 4 Big bags of Sundari scented betel nut containing 5000 packets worth Rs.3,00,000/-.

7. It is thus clear that huge quantity of prohibited articles worth of Rs.74,11,750/- is seized from the shop which is admittedly owned by the applicant.

Earlier, Crime No. 0538 of 2019 is registered with Nanded Rural Police Station for offences punishable under sections 188, 272, 273, 328, read with 34 of the Indian Penal Code and sections 26, 27(2)(e), 27(2)(a) and 59 of Food Safety and Standards Act, 2006, wherein similar allegations are levelled against the applicant. In this crime, the Sessions Court refused anticipatory bail to the applicant. It appears that applicant is habitual in dealing with the contraband articles.

8. Learned advocate for the applicant has argued that section 328 of the Indian Penal Code cannot be made applicable to the case of applicant, and other sections are bailable. Therefore, he may be granted anticipatory bail. I am unable to persuade myself to grant anticipatory bail to the applicant on that ground considering the huge quantity of contraband articles recovered from the applicant, and the criminal antecedents of the applicant. Since the presence applicant is necessary for effective investigation, the applicant does not deserve discretionary relief.

9. Applicant cannot be said to be similarly situated like applicant in anticipatory bail application No.1345 of 2022, considering quantity recovered, and the criminal antecedents of applicant. Hence, reliance on the said order is misplaced.

10. For the aforesaid reasons, the application is rejected.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane