

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 1263 OF 2022

Mohammed Irshad Mohammed
Ishaque Shaikh

.... Applicant

v/s.

The State of Maharashtra

.... Respondent

Mr. Marmik Shah a/w. Mr. Kunal Bilaney h/f. Mr. Kushal
Mor for the Applicant.
Ms. A.A. Takalkar, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 06th MAY, 2022.

P. C. :-

. This is an Application under section 438 of Cr.P.C. for pre-arrest bail in C.R.No.303/2022 registered with Mumbra Police Station, Thane for offences punishable under sections 328, 188, 273, 179 of the Indian Penal Code and section 59 of Food Safety and Standards Act, 2006.

2. Heard Mr. Marmik Shah, learned counsel for the Applicant and Ms. A.A. Takalkar, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the First Information Report (FIR) lodged by Jagdish Ramu Gaavit, Police Naik. It is the case of the complainant that on 04/04/2022, they had received information that some banned material such as gutkha, pan masala was stored in the premises of Global Park Society. Al Fugram, A-wing, 13A/701. Accordingly, they visited the place and confirmed the source of information. API – Ugalmugale gave a written report to the concerned PI of the police station. They secured presence of the panchas and raided the place. It is stated that some banned items worth Rs.1,59,600/- was seized. The co-accused – Mohammad Ansari who was in the premises of Naziz Plaza Co-operative Housing Society was placed under arrest. It is the case of the prosecution that the Applicant was also involved in keeping the said items in the said premises.

4. It is pertinent to note that except section 328, all other offences are bailable. As regards applicability of section 328 IPC, it will be advantageous to refer to the decision in ***Joseph Kurian Philip Jose v/s. State of Kerala (1994) 6 SCC 535***, wherein the Hon'ble Supreme Court has held thus :-

“ 10. In order to prove offence under Section 328 the prosecution is required to prove that the substance in question was a poison, or any stupefying, intoxicating or unwholesome drug, etc., that the accused administered the substance to the complainant or caused the complainant to take such substance, that he did so with intent to cause hurt or knowing it to be likely that he would thereby cause hurt, or with the intention to commit or facilitate the commission of an offence. It is, therefore, essential for the prosecution to prove that the accused was directly responsible for administering poison etc. or causing it to be taken by any person, through another. In other words, the accused may accomplish the act by himself or by means of another. In either situation direct, reliable and cogent evidence is necessary....”

5. Similar view was taken by this Court in ***Vijay Sevashankar Upadhyay and ors. v/s. State of Maharashtra 2015 SCC Online Bom 8141***. Under the circumstances, in my considered view, prima facie, essential ingredients of section 328 are not made out. Hence, no case is made out for custodial interrogation. Hence, the Application is allowed on the following terms and conditions :-

(a) In the event of arrest of the Applicant in C.R.No.303/2022 registered with Mumbra Police Station,

Thane, he shall be released on bail on furnishing bail bonds in the sum of Rs.25,000/- with one or two sureties in the like amount ;

(b) The Applicant shall report to the Investigating Officer for two days from 09/05/2022 between 11:00 a.m. to 02:00 p.m. and further as and when required by the Investigating Agency ;

(c) The Applicant shall not interfere with the witnesses and shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(d) The Applicant shall keep the Investigating Officer informed of his current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

6. The Application stands disposed of.

**PREETI
H JAYANI**

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Date: 2022.05.11
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(SMT. ANUJA PRABHUDESSAI, J.)