

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1365 OF 2022

Sanjay Ramdas Ranware ...Applicant
vs.
The State of Maharashtra ...Respondent

Ms. Manisha Devkar, for the Applicant
Ms. M.R. Tidke, APP for the State.
Mr. Nagnath Patil, API, Indapur police station present.

CORAM : N. J. JAMADAR, J.

DATE : JUNE 14, 2022

P.C.:

1. The applicant who is arraigned in C.R. No.259 of 2022 registered with Indapur police station, Pune for the offences punishable under sections 328 and 188 of the Indian Penal Code, 1860 and sections 26(2), 26(2)(a), 27(3)(d), 27(3)(e) and 59 of the Food Safety and Standards Act, 2006 has preferred this application for anticipatory bail.

2. The first information report came to be lodged against the applicant with the allegations that on 19th April, 2022 pursuant to an information Indpaur police laid a vigil near village Redni and intercepted the applicant who was riding Honda Unicorn motor cycle bearing No. MH-12-BG 8610. The applicant was carrying two bags near the handle and two bags on the carriage of the said motor

cycle. Upon search, it was found that the bags contained the contraband articles like sainted tobacco and pan masala. The said articles and the motor cycle were seized. Sample of contraband articles were collected.

3. Apprehending arrest, the applicant preferred an application for pre arrest bail. The learned Session Judge was persuaded to reject the application holding, inter alia, that the offence punishable under section 328 of the Penal Code was prima facie made out. Hence, this application.

4. I have heard Ms. Manisha Devkar, learned counsel for the applicant and Mrs. Tidke, learned APP for the State at some length.

5. Mr. Devkar, learned counsel for the applicant submitted that, in the facts of the case, since contraband articles have been allegedly seized and samples collected, no case for custodial interrogation of the applicant is made out. Mr. Devkar further submitted that, in the facts of the case, the applicability of section 328 of the Penal Code is also debatable. The learned counsel for the applicant placed a strong reliance on the judgment of a learned single judge of this Court in the case of **Manjabhau Manchakrao**

Rokde vs. The State of Maharashtra,¹ to lend support to the submission that the act of storage and transportation of contraband products does not fulfill the ingredients of section 328 of the Penal Code.

6. In opposition to this, learned APP submitted that the applicant is habitually indulging in the storage, transportation and sale of contraband tobacco products. Another crime, bearing C.R. No. 925 of 2020, has been registered against the applicant wherein identical allegations have been made.

7. In the case of **Manjabhau Rokde** (supra) the learned single Judge elaborately considered the question of applicability of section 328 in the backdrop of the allegations of storage, transportation and sale of contraband tobacco products. The learned single Judge relied upon the judgment of the Supreme Court in the case of **Joseph Kurian Philip Jose vs. State of Kerala**² wherein the ingredients of the offence punishable under section 328 were postulated by the Supreme Court in the backdrop of a case arising out of “poisonous liquor tragedy”. Following observations of the Supreme Court in the case of **Joseph Jose** (supra) were extracted

1 ABA No. 944 of 2020 and connected matters dated 30th September, 2021.

2 (1994) 6 SCC 535

by the learned single Judge.

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. Now on that basis it has to be seen whether A-1 had any role to play in directly administering to or causing to be taken the poisonous liquor by Sreedharan Pillai deceased, who had purchased and consumed liquor from a retail shop, with intent to cause hurt to him or knowing it to be likely that it would cause hurt to him. This has to be solved remaining cognisant that Sections 272 and 328 are separate offences described in the Indian Penal Code.

11. As it appears both the findings of the trial Judge as also by the High Court are somewhat vague and confusing. The trial court observed, as is evident from the emphasised portion, that it cannot be said that the accused or any of them knew that arrack mixed with small quantity of methyl alcohol (2.64% as found by the chemical analyst) was likely to cause death or serious bodily injury that is likely to cause death. On this finding applicability of Section 302 or even that of Section 304 IPC has been ruled out. This finding on the fact situation is open to doubt. If the finding be correct that the accused did not have guilty knowledge of causing death or of likelihood of causing death or of serious bodily injury likely to cause death, how could the guilty knowledge stop in that slide or grading not coming down to take within its arms hurt also. The act of the accused in adulterating liquor per se, as the law then stood sans amendments, would not attract the provision of Section 328 of IPC unless there is positive

evidence that A-1 administered the poisoned liquor directly or caused it to be taken by Sreedharan indirectly with the necessary intent and mens rea. This view of the learned trial Judge as confirmed by the High Court does not appear to us to be sound in the backdrop of the death actually occurring. But since it has taken that view it cannot stop short of hurt and so must slip down to a fall downright. Important links in the prosecution case on this particular (sic aspect) remain otherwise missing. A- I would thus have to be acquitted of the charge under [Section 328](#) IPC in carrying out the findings of the High Court to their logical end.

(emphasis supplied)

8. Placing reliance on the aforesaid observations, the learned single Judge enunciated the position in the context of the allegations of storage and transportation of contraband tobacco products, in the following words:

21] This brings me back to the requisites of Section 328 of IPC. On closer scrutiny of Section 328, it is obvious 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. Simply stating, the accused may achieve and complete the act by himself or by means of another. It is nowhere alleged that the applicants were primarily responsible for administering poison. It is also not the case that applicants had helped by aid of third person or by involving third person, who had authority to do so, caused it (poisonous substance) to be used by others. It would be premature to say that act of storage or transporting, as is alleged against the applicants, should be construed as fulfilling the requisites of Section 328 of IPC. There is need to guard against this hard-headed view, which is canvassed by the learned APP, on a sheer contemplation that the act of applicants would tantamount to an act of “administering” or “causing to be taken”. The ratio laid down in the case of **Joseph Kurian** (supra) is all pervasive qua the cases in hand and applies with full rigour.

(emphasis supplied)

9. At this juncture, in the light of the aforesaid enunciation, I do not deem it necessary to delve deep into the question of applicability of section 328 of the Penal Code, especially in the context of the facts of the case at hand. Evidently, the applicant was allegedly intercepted while he was transporting the contraband articles on motor cycle. The said contraband articles were allegedly seized. Even the motor cycle which the applicant was riding came to be seized. Samples of contraband articles have allegedly been collected and sent for analysis. Indisputably, there are no allegations that the applicant was directly or indirectly involved in administering poisonous substance. In the circumstances, at this stage, the question as to whether the act of transportation of the contraband articles satisfies the requirement of section 328 of the Penal Code is debatable.

10. In the facts of the case, where the police claim to have seized the entire quantity of contraband articles, the custodial interrogation of the applicant, does not seem warranted.

11. The fact that another offence of same kind has been registered against the applicant, is undoubtedly of some significance in considering the entitlement for pre arrest bail. I have perused the

copy of the first information report in C.R. No. 925 of 2020 annexed to the police report. The allegations in the said first information report are also of identical nature, in the sense that, the applicant was found transporting the contraband articles on motor cycle. The applicability of section 328 of the Penal Code in the backdrop of the identical allegations again becomes a contestible matter.

12. The learned counsel for the applicant submitted that in the said case, the applicant has since been released on bail.

13. In the aforesaid view of the matter, I am persuaded to exercise the discretion in favour of the applicant with an additional condition that the applicant shall not indulge in the activity of similar nature for which he has been arraigned in this offence. Hence, the following order.

ORDER

1] The application stands allowed.

2] In the event of arrest in C.R. No.259 of 2022 registered with Indapur police station, Pune for the offences punishable under sections 328 and 188 of the Indian Penal Code, 1860 and sections 26(2), 26(2)(a), 27(3)(d), 27(3)(e) and 59 of the Food Safety and

Standards Act, 2006 the applicant Sanjay Ramdas Ranware be released on bail on furnishing a P.R. Bond in the sum of Rs. 20,000/- with one or two sureties in the like amount.

3] The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

4] The applicant shall attend Indapur police station on every alternate Sunday from 10 am to 1 pm for a period of two months from today.

5] The applicant shall not indulge in the activity similar to the activity for which the applicant has been arraigned in the instant case.

(N. J. JAMADAR, J.)