

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1764 OF 2022

Mujaheed Sabir Ansari urf Iqbal and .. Applicants
anr

Versus

The State of Maharashtra .. Respondent

...

Mr.Warmik Shah for the applicant.
Smt. A.A. Taklakar, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 4th JULY, 2022

P.C:-

1 The applicant is facing accusation under section 328, 272, 273 of IPC and the relevant sections of Food safety Act 2006. On the information received, a car was intercepted and the driver of the car was questioned. On its search, a gunny sack was found with Gutka products. The applicant No. 1, is found to be the owner of the car bearing No. MH-48-H-5562.

2 In the presence of the panchas, the car as well as the prohibited goods worth Rs. 15,300/- has been seized.

3 The position of law whether an offence u/s.328 gets attracted when the prohibited substance, is transported or

supplied, but it is caused to be consumed is attracted or not, till date, is not crystallized.

4 A decision of the Division Bench of this Court in case of Anand Ramdhani Chaurasiya & Anr Vs. The State of Maharashtra [(2019) SCC Online Bombay 1857], where a view was taken that Section 328 IPC could not have been invoked, has been stayed by the Hon'ble Apex Court. However, in SLP No.843/2021 Mohd. Ali Rehman @ Mohammed Ali Abdul Raheman Shaikh Vs. State of Maharashtra, the Hon'ble Apex Court, on 13/11/2021 took note of the pending matter before it, in regards to invocation of Section 328 of the IPC. The Special Leave Petition is directed to be tagged with the Special Leave Petition filed by the State of Maharashtra in case of Anand Chaurasiya (supra). The Hon'ble Apex Court has directed the Investigating Officer not to arrest the petitioner subject to he rendering co-operation.

5 Considering the conundrum of the applicability of provisions of Section 328 in a situation like this, and since the issue is pending before the Hon'ble Apex Court, pursuant to the view of the Division Bench of this Court and since judgment of the Division Bench taking a view that it cannot be invoked, has been stayed, the following ad-interim order would serve the purpose of justice for the time being. Hence, the following order:-

O R D E R

(a) in the event of their arrest, the Applicant No.1 - Mujaheed Sabir Ansari Urf Iqbal and Applicant No.2-Birendra Prakash Shahu Urf Babu in ABA No.1764 of 2022 in connection with C.R.No.387/2022 registered with Manpada Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- each with one or two sureties of the like amount.

(b) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(c) The Applicants shall report to the Police Station as and when called and render all his co-operation to the Investigating Officer.

6 Application is disposed off.

(SMT. BHARATI DANGRE, J.)