

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3885 OF 2021

ARJUN SANDIP BHADEKAR)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

WITH

BAIL APPLICATION NO.3877 OF 2021

SANDIP SADASHIV BHADEKAR)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Tushar Sonawane, Advocate for the Applicant in both Applications.

Smt.P. P. Shinde, APP for the Respondent – State in both Applications.

CORAM : V. G. BISHT, J.

**RESERVED ON : 9th DECEMBER 2021
PRONOUNCED ON : 3rd JANUARY 2022**

AVK

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P.C. :

1 The present applications have been moved by the applicants under Section 439 of the Code of Criminal Procedure in Crime No.1047 of 2021 registered with Police Station Saikheda, Niphad, Nasik, for offences punishable under Section 179, 188, 272, 273, 328, 34 of the Indian Penal Code (IPC). and under Section 26(2)(i)(1), 26(2)(iv), 27(3)e and 59 of Food and Safety Act.

2 On 9th October 2021, both applicants were allegedly found transporting prohibited gutkha and pan masala worth Rs.1,03,589/- by Maruti Suzuki Car and therefore they came to be arrested. First Information Report (FIR) accordingly came to be lodged.

3 Mr.Tushar Sonawane, learned counsel for the applicants, at the very outset, submits that the issue as to the

applicability of Section 328 of IPC is pending before the Hon'ble Apex Court. However, he invited my attention to the view taken by this Court in bunch of Anticipatory Bail Applications (Exh. D) and pointed out that this Court has taken a view of non-applicability of Section 328 of the IPC. Moreover, investigation is over. There is nothing to be recovered or seized. Hence, no purpose would be served by keeping the applicants behind the bar.

4 Smt.P. P. Shinde, learned APP, on the other hand, opposed the submissions by contending that the offence being of serious nature, the applications are liable to be rejected.

5 It may be noted from the record that in a similar offence having different crime registration number (C.R.No.) pertaining to one of the present applicants, namely, Sandip Sadashiv Bhadekar was released by the learned trial Court whereas the present applicant was released on bail by this Court (Coram : S. P. Tavade, J.) on 3rd November 2021 on the ground

that his father, being the owner of the vehicle, was already released on bail and the investigation was also over.

6 As far as the applicability of Section 328 of the IPC is concerned, this Court has taken a very clear and categorical view of in-applicability of section 328 of IPC in Anticipatory Bail Application No.944 of 2020 with connected Anticipatory Bail Applications vide order dated 21st September 2021. Moreover, the investigation is over. There is nothing to be recovered from the applicants. In view of this, their custody is totally unwarranted. Hence, I pass the following order :

ORDER

- (i) Applicant – Arjun Sandip Bhadekar (Bail Application No.3885 of 2021) and Applicant Sandip Sadashiv Bhadekar (Bail Application No.3877 of 2021) shall be released on bail in Crime No.1047 of 2021 registered with Police Station Saikheda, Niphad, Nasik, on their executing P.R.Bond in the sum of Rs.25,000/- each and on furnishing one or two sureties in like amount by each of them.

- (ii) The applicants shall not tamper with prosecution evidence.
- (iii) The applicants shall attend the Court proceedings regularly.
- (iv) Bail before the trial Court.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (vii) The applications are allowed in the aforesaid terms and stand disposed off accordingly.

(V. G. BISHT, J.)

