

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

ANTICIPATORY BAIL APPLICATION NO. 2743 OF 2021

Yashoda Anil Gudadavat ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 3078 OF 2021

Pralhad Suraj Rajput ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Ranjeet Pawar, for the Applicant.

Mrs. J. S. Lohokare, APP for the State

CORAM: N. J. JAMADAR, J.

DATED : 28th JUNE, 2022

ORDER:-

1. These are the applications for pre-arrest bail in connection with CR No.746 of 2021, registered with Yawat Police Station, for the offences punishable under Sections 328 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code") and Sections 65, 65(c), 65(f) of the Maharashtra Prohibition Act, 1949.

2. Mahendra Chandane, attached to Yavat Police Station lodged a report on 29th August, 2021 that, pursuant to an intimation, a raid was conducted at Pilanwadi near Dubewadi, Taluka Daund. The police party noticed that besides a rivulet persons were distilling illicit liquor. Noticing the police party, the

applicants started to flee away. Despite chase, the applicants could not be apprehended. The incriminating articles were seized. Samples of illicit liquor were collected. Since the illicit liquor which was being distilled, on consumption, posed threat to human life, the crime was registered for the offence punishable under section 328 of Penal Code, apart from the offences punishable under Sections 65, 65 (c), 65 (c) of the Maharashtra Prohibition Act, 1949.

3. By an order dated 18th November, 2021, this Court was persuaded to grant interim pre-arrest bail to the applicants. This Court, having regard to the nature of the accusation, recorded a *prima facie* view that, the applicability of Section 328 of Penal Code appears to be doubtful.

4. I have heard Mr. Pawar, the learned counsel for the applicants and the learned APP for the state. With the assistance of the learned counsels, I have perused the material on record.

5. The applicants are sought to be arraigned with a case that, when the raid was conducted, the applicants allegedly fled away from the spot. This implies that the applicants were not apprehended on the spot at the time of the alleged raid.

6. The submission on behalf of the applicants that, the question as to whether the applicants are in fact found in possession of the illicit liquor and distilled illicit liquor is debatable, appears to carry some substance. The applicability of Section 328 of the Penal Code, in the attendant facts of the case, also appears to be debatable.

7. As the raiding party claimed to have seized the incriminating articles and collected samples of illicit liquor, further custodial interrogation of the applicants does not seem warranted. As the police party conducted the raid, there is no possibility of tampering with evidence.

8. I am, therefore, persuaded to make the order of interim pre-arrest bail absolute.

9. Hence the following Order:

: ORDER :

(i) The applications stand allowed.

(ii) The interim order of pre-arrest bail dated 18th November, 2021, (ABA/2743/2021) is made absolute on the terms and conditions incorporated therein.

The interim order of pre-arrest bail dated 21st December, 2021, (ABA/3078/2021) is made absolute on the terms and conditions incorporated therein.

(iii) In addition, the applicants shall regularly attend the proceedings before the jurisdictional Court.

[N. J. JAMADAR, J.]