

Santosh

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

**ANTICIPATORY BAIL APPLICATION NO. 2793 OF 2021**

Mandar Yashwant Chavan ...Applicant

**Versus**

The State of Maharashtra ...Respondent

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KULKARNI

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Mr. Aniket Niakam, i/b Amit Icham, for the Applicant.

Mr. A. A. Palkar, APP for the State/Respondent.

**CORAM: N. J. JAMADAR, J.**

**DATED: 4<sup>th</sup> JULY, 2022**

**ORDER:-**

1. This is an application for pre-arrest bail in connection with CR No.231 of 2021, registered with Haveli Police Station for the offences punishable under Sections 328 of Indian Penal Code, 1860 ("the Penal Code") and Sections 65, 65(b), 65(c), 65(d), 65(e) and 65(f) of the Maharashtra Prohibition Act, 1949 ("the Prohibition Act").

2. The indictment against the applicant is that on 10<sup>th</sup> October, 2018 in a raid conducted at the house of the applicant situated at Lamanwasti, Khadakwasla, Haveli, Pune, the applicant was found preparing *Tadi* despite prohibition for manufacture and sell of *Tadi*. The applicant was found in possession of a substance which appeared

harmful for human consumption and thereby committed the offence punishable under Section 328 of the Penal Code and Sections 65, 65(b), 65(c), 65(d), 65(e) and 65(f) of the Prohibition Act. The applicant allegedly fled away from the spot of raid.

3. On 29<sup>th</sup> November, 2021, this Court was persuaded to grant interim pre-arrest bail, *prima facie*, opining that the applicability of Section 328 of the Penal Code to the facts of the case appeared to be doubtful.

4. The learned APP pointed out that the substance found at the said premise during the course of the raid was found 'not to confirm to the standard' as per Regulation 2.10.5(1) of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 and also unsafe food as per Section 3(1)(zz)(5) of the Food Safety and Standards Act, 2006, by the State Public Health Laboratory, Pune. It was further submitted that a number of offences have been registered against the applicant and in the past couple of years the applicant has been habitually dealing in the bootlegging activity.

5. In the backdrop of the aforesaid submissions, the applicant was called upon to meet the resistance to the

prayer for pre-arrest bail based on the antecedents of the applicant.

6. The learned Counsel for the applicant submitted that as matter of fact, crimes have been registered against the applicant in the year 2020 – 2021 for the offences punishable under Sections 65, 65(c), 65(d) and 65(e) of the Prohibition Act. However, the learned Counsel for the applicant attempted to assail the applicability of the provisions contained in Section 328 of the Penal Code.

7. The applicability of the provisions contained in Section 328 of the Penal Code may be debatable. However, it is trite that exercise of jurisdiction under Section 438 of the Code of Criminal Procedure, 1973 (“the Code”) is discretionary. The antecedents of the person, who approaches for pre-arrest bail under Section 438 of the Code, bear upon the exercise of the jurisdiction. If a person is shown to be habitually dealing in bootlegging activity, the grant of pre-arrest bail as a matter of course would give a long leash to such person and would defeat the object of prohibition. Thus, notwithstanding the issue of applicability or otherwise of the provisions contained in Section 328 of the Penal Code, the antecedents of the applicant dissuade this Court from exercising the discretion

in favour of the applicant. Custodial interrogation of the applicant would facilitate unmasking of applicant's associates and unravelling of supply lines.

8. For the forgoing reasons, I am persuaded to reject the application.

9. The application stands rejected.

10. Interim order dated 29<sup>th</sup> November, 2021, stands vacated.

**[N. J. JAMADAR, J.]**