

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (ABA) NO.790/2021

Naresh Kishorbhai Palan Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. K. H. Anandani, Advocate for the Applicant.
Mr. V. A. Thakare, A.P.P. for the Non-applicant/State.

CORAM : SURENDRA P. TAVADE, J.
RESERVED ON : 28/01/2022.
PRONOUNCED ON : 02/02/2022.

1. Hearing was conducted through video conferencing and the learned counsel agreed that the audio and video quality was proper.
2. The applicant has filed this application for pre-arrest bail under Section 438 of the Code of Criminal Procedure in respect of Crime No.849/2021 registered with Ramdas Peth Police Station, Akola for the offences punishable under Sections 328, 272, 273, 188 of the Indian Penal Code and Section 26(2)(iv), 27(3) and 59 of the Food Safety And Standards Act, 2006.
3. On 29.10.2021 Police Inspector of Local Crime Branch, Akola namely, Gopal Digambar Jadhav received secrete information that contraband Gutkha is stored in unauthorized room near Mashum Shaha Dargha Chowk. The said room was in possession of accused Mobinulla Khan, who had let out to the present applicant. It is contended that on raid the informant has seized contraband Gutkha and other articles worth Rs.23,50,840/-. He also took samples of this contraband and

sent it for analysis. It is alleged that the applicant took the unauthorized room for storing his goods from Mobinulla Khan. It is alleged that Mobinulla Khan is arrested and he also gave information regarding the illegal activities of applicant. Hence, the present applicant filed this application for bail.

4. On the basis of above allegations, it is contended by the applicant that he runs a medical shop. He is no way concerned with the alleged room as well as the contraband found in the room. It is contended that no specific role is attributed to the applicant. The prosecution is relying on the statement of co-accused to book him in present crime. It is contended that the custodial interrogation of the applicant is not required. The applicant is having permanent residence, therefore, there is no possibility of absconding, therefore, he prays for bail.

5. Notice of this application was issued to the prosecution. Prosecution has filed its reply, wherein the brief facts of the First Information Report are contended that the contraband articles worth Rs.23,50,840/- were seized from the room which was in possession of the applicant. It is contended that the applicant had stocked huge quantity of contraband with the help of co-accused, and therefore, there is sufficient material against the applicant. Hence, it is prayed that the application be rejected.

6. Heard Mr. K. H. Anandani, learned counsel for the applicant and Mr. V. A. Thakare, learned A.P.P. on behalf of the State.

7. Perused the First Information Report, wherein it is specifically alleged that the informant received secret information that the applicant and co-accused had stored contraband Gutkha and other material in an unauthorized room near Mashum Shaha Dargha Chowk. In pursuance of the information, raid was carried out, wherein contraband articles worth Rs.23,50,840/- have been seized. It appears from the investigation papers that on investigation, it was revealed that the room in question was owned by the co-accused Mobinulla Khan, who had let out to the applicant. It is true that the applicant is running medical shop. He is having documents regarding his business. But it appears from the material on record that the applicant had hired the room in question wherein the contraband articles have been seized by the Investigating Officer. The quantity of contraband is huge. Therefore, the Investigating Officer has applied Section 328 of the Indian Penal Code.

8. The learned counsel for the applicant submits that the provisions of Section 328 of the Indian Penal Code cannot be made applicable to the facts of the present application but the said aspect can be decided at the time of framing of the charge. But at present it is *prima facie* established that the huge quantity of Gutkha and Scented Pan Masala was seized from the room which was in possession of the applicant. The investigation is in crucial stage. The Investigating Officer has to trace out from where the contraband articles were brought and to whom those were to be supplied. Therefore, the custodial interrogation of the applicant is so much essential.

9. In view of the nature of the offences and looking to the amount of contraband, it would not be just and reasonable to enlarge the applicant on pre-arrest bail. Hence, I pass the following order :

ORDER

The criminal application is rejected.

(SURENDRA P. TAVADE, J.)

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