

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 604 OF 2023

Mohammad Abrar s/o Abdul Halim

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. Shaikh Rauf Shaikh Rasul, Advocate for the applicant.

Mr. S. N. Morampalle, APP for the respondents.

CORAM : R. M. JOSHI, J.

DATE : 16th JUNE, 2023.

PER COURT :

1. Applicant is apprehending arrest in connection with Crime no. 46/2023 registered with Himayatnagar Police Station, Dist. Nanded for the offences punishable under Sections 188, 272, 273, 328 of the Indian Penal Code and Sections 26(2)(i), 26(2)(iv), 27(3)(e), 30(2)(a) and 59 of Food Safety and Standards Act.

2. The First Information Report indicates that on 26th February, 2023, at 10.30 pm, secret information was received that contraband articles are stored in a house in Himayatnagar. Accordingly, raid was conducted and contraband articles including

Gutka were seized and offence came to be registered against the applicant.

3. Learned counsel for the applicant states that the issue as to whether the offence punishable under Section 328 of the Indian Penal code would attract to Gutkha is pending before the Hon'ble Apex Court. He further states that since the entire recovery is already done, custodial interrogation of the applicant is not necessary.

4. This contention is opposed by learned APP with the submission that the investigation needs to be done in order to find out source of said Gutkha. He further relies on the statement of the owner of the premises from which the seizure of contraband articles is done.

5. At this stage, it cannot be said that the offence punishable under Section 328 of the Indian Penal Code would attract in the present case. As far as recovery is concerned, entire contraband articles are seized during the raid. Nothing is to be recovered from the instance of the applicant. Perusal of statement of

the owner of the premises from which contraband articles were seized, only shows that present applicant was staying along with the co-accused. This statement is not sufficient to hold that they were doing business jointly or that applicant is the owner of said contraband articles. At this stage, except for the alleged statement of the co-accused there is no evidence to connect the applicant with crime. So far as further investigation is concerned, in order to find out the source of said contraband articles, appropriate direction to the applicant to appear before the Investigating Officer would be sufficient. Hence, application is allowed in terms of the interim order.

(R. M. JOSHI)
Judge

dyb