



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.2027 OF 2023

**BASAVRAJ DILIP BIRAJDAR
VERSUS
THE STATE OF MAHARASHTRA**

...

Mr. S. N. Patne, Advocate for the Applicant.
Mrs. P. J. Bharad, APP for Respondents-State.

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**WITH
BAIL APPLICATION NO.2052 OF 2023**

**SALIM MEHEBOOB KAZI
VERSUS
THE STATE OF MAHARASHTRA**

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Mr. A. S. More, Advocate for the Applicant.
Mrs. P. J. Bharad, APP for Respondents-State.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 07th DECEMBER, 2023.**

PER COURT:-

1. The applicants seek regular bail in connection with Crime No.514/2023 registered with Omerga Police Station, Tq. Omerga, Dist. Osmanabad for the offences punishable under Sections 328, 188, 272, 273 of the Indian Penal Code and Sections 26(2)(i), 26(2)(iv), 27 (3)(e), 30(2), 59 of the Food Safety Standard Act, 2006.

2. The investigation was set in motion on the basis of information given by Smt. Nasarin Tanveer Mujavar, Food Safety Officer, office of the Assistant Commissioner, Food and Drugs (Administration), Maharashtra State, Dharashiv. She alleges that she is under obligation to implement the provisions of Food

and Drugs Act and she has been appointed as Food Safety Officer. She has been posted at Dharashiv. She further states that as per Notification issued by Commissioner of Food Safety invoking provisions of Food Safety and Standards Act, 2006 the production, sale, distribution and storage of gutkha, pan masala, scented tobacco, scented supari is banned in the State of Maharashtra latest with effect from 18.07.2023 for the period of one year. On 16.09.2023 on the basis of secrete information the raid was conducted on the shed constructed in the field at Omerga, Dist, Dharashiv. During this raid, the contraband, packing machines, vehicle used for transportation, etc. has been seized. The accused Basavraj has been apprehended on the spot. Total value of good is worth Rs.41,70,200/-. Based on the aforesaid information, Crime No.514/2023 came to be registered. Initially, the applicant Basavaraj Birajdar is arrested at the time of raid. During the course of investigation, in pursuance of the aforesaid crime applicant Salim Kazi in Bail Application No.2052/2023 came to be arrested. It appears that, both the accused persons are behind the bar for almost three months. Their prayer for grant of bail has been rejected by the Sessions Court. Hence, present applications.

3. The learned APP opposes the prayer for grant of bail.

4. Having considered submissions advanced, apparently the allegations in the FIR suggest that the contraband worth Rs.6,75,300/- was found in the raid and applicant Basavraj Birajdar was found in possession of the aforesaid contraband. The name of applicant Salim Kazi is subsequently added on the basis of disclosure statement of co-accused persons. The offences under Sections 328, 272, 273 and 188 of the Indian Penal Code are invoked. Whether Section 328 of the Indian Penal Code would

attract in this case would be matter of trial. Pertinently, whether in absence of administration of poisonous stupefying, intoxicating substance, offence under Section 328 of the Indian Penal Code can be invoked or not is pending consideration before the Apex Court. However, recently two Division Benches of this Court have taken view that Section 328 of the Indian Penal Code would not attract based on previous judgment of this Court at Principal Seat in the matter of *Anand Ramdhani Chaurasia and Another Vs. State of Maharashtra and Others*¹, wherein reference is given to the judgment passed by the Supreme Court of India in the matter of *Joseph Kurian Philip Jose Vs. State of Kerala*². However, other two Division Benches of this Court have recorded different opinions. Be that as it may, the rest of the offences are bailable. The incriminating articles are already seized. The investigation in the matter is practically over. Further detention of the applicant would not be necessary. Hence, case is made out for grant of bail. Hence, the following order:

ORDER

- (i) Bail Applications are allowed.
- (ii) The applicants, Basavraj S/o. Dilip Birajdar and Salim S/o Meheboob Kazi, be released on bail in Crime No.514/2023 registered with Omerga Police Station, Tq. Omerga, Dist. Osmanabad for the offences punishable under Sections 328, 188, 272, 273 of the Indian Penal Code and Sections 26(2)(i), 26(2)(iv), 27 (3)(e), 30(2), 59 of the Food Safety Standard Act, 2006 on furnishing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each on following condition:
 - a. The applicants shall not tamper with the prosecution evidence in any manner.

¹ 2019 ALL M.R. (Cri.) 4402.

² (1994) 6 SCC 535.

- b. The applicants shall attend concerned Police Station once in a week i.e. on every Monday between 10.00 am to 02.00 pm till filing of the charge-sheet.
 - c. The applicants shall not indulge in similar offence.
- (iii) Applications are disposed of.

(S. G. CHAPALGAONKAR)
JUDGE