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

BAIL APPLICATION NO.2098 OF 2023

**AKBAR CHAUSE NASER CHAUSE
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. Sachin Jaiprakash Salgare
APP for Respondents: Mr. A.S. Shinde.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 8 DECEMBER, 2023

ORDER :-

1. The applicant seeks regular bail in connection with Crime No. 344 of 2023 dated 4.11.2023 registered with Itwara Police station, Dist. Nanded for the offences punishable under Sections 188, 272, 273, 328 r/w. 34 of IPC and Section 26(1)(20(iv), 27(3)(D)(E), 30(2)(A) and Section 59(iv) of the Food Safety and Standards Act, 2006.

2. The investigation was set in motion on the basis of information given by Santosh Vitthal Kankawad, who is the Food Safety Officer under the State of Maharashtra. It is alleged that on 4.11.2023 a raid was conducted at the shop of the applicant/accused and contraband in the nature of Gutka Pan Masala worth Rs. 10,09,507/- has been seized. It is further stated that in view of the notification issued by the Commissioner, Food and Drugs Department, dated 18.7.2023 aforesaid articles are banned from consumption, transport, storage etc. The applicant has been arrested in pursuance of the aforesaid crime on

4.11.2022. Since then he is behind bars.

3. Mr. Salgare, learned counsel for the applicant submits that the investigating in the matter is almost complete. The contraband is already seized and it is in the custody of police. He would submit that the offences alleged are bailable except offence under Section 328 of IPC. He would submit that in the present case, Section 328 of the IPC may not attract since there is no allegation of intentional administration of the spurious or poisonous substance. He would submit that the Division Bench of this Court, relying upon the judgment of the Supreme Court of India in the matter of *Joseph Kurian Philip Jose Vs. State of Kerala (1994)6 Supreme Court Cases 535*, took a view that Section 328 cannot be attracted in a case, wherein the poison or any intoxicating or unwholesome drug or thing is administered or caused to be taken by any person with intent to cause hurt. He would further place reliance on the judgment of this court in the matter of *Anand Ramdhani Chaurasia and another vs. State of Maharashtra (Criminal Writ Petition No. 3607 of 2019)*. He would, therefore, urge that further detention of the applicant would not be necessary.

4. The learned APP strongly opposes the prayer for grant of bail. He would submit that huge quantity of contraband was found in possession of the applicant. The Division Bench of this Court in two matters have taken a different view than the view taken in the case of Anand Chaurasiya and arrived at the conclusion that Section 328 clearly cover the cases regarding storage, sale of contraband.

5. Having considered the submissions advanced, it is apparent that the applicability of Section 328 of IPC in such matters is a question

pending for consideration before the Supreme Court. So far as the factual aspects of the present case is concerned, the applicant is behind bars for more than one month. The contraband is already seized and possessed by the Investigating Agency. All other offences alleged against the applicant are bailable. The investigation is almost over. Further detention of the applicant in such case is not necessary. Hence, a case is made out for grant of bail.

6. ORDER

- (i) The application is allowed ;
- (ii) The applicant – Akbar Chause S/o. Naser Chause, be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- with one surety in the like amount in connection with No. 344 of 2023 dated 4.11.2023 registered with Itwara Police station, Dist. Nanded for the offences punishable under Sections 188, 272, 273, 328 r/w. 34 of IPF and Section 26(1) (20(iv), 27(3)(D)(E), 30(2)(A) and Section 59(iv) of the Food Safety and Standards Act, 2006. on the following conditions :-
 - [a] The applicant shall not tamper with the evidence ;
 - [b] The applicant shall attend each and every effective date of hearing before the trial court.
 - [iii] The application stands disposed of.

**[S.G. CHAPALGAONKAR]
JUDGE**

grt/-