

AGK

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

ANTICIPATORY BAIL APPLICATION NO.1113 OF 2023

Rajendra Jambu Jakate

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Kedar J. Patil for the applicant.

Mrs. Rutuja Ambekar, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JUNE 28, 2023

PC.:

1. The applicant in Anticipatory Bail Application is seeking relief under Section 438 of the Criminal Procedure Code, 1973 in connection with C.R. No.147 of 2023 registered with Shivajinagar Police Station, Ichalkaranji for offences punishable under Sections 328, 272, 273, 188 of Indian Penal Code, 1860 and Section 59 of the Food Safety and Standards Act, 2006.

2. The case of prosecution is that they received a phone call that one unknown person in Juna Chandur Road is selling illegal gutka which is banned in the State of Maharashtra. When they reached the spot and were having a watch at house named Rajsangram, they saw a person in the house and they also saw that the person was selling Pan Masala, Patti, Scented Tobacco, Gutka to people and they confirmed the information received. At about

9.00 a.m. when the police officials went on the premises of the house they saw that the person saw them coming and taking advantage of dark he ran away. Later one women came out of the house and she was the wife of the person who ran away. Police officials began to search the premises and found Pan Masala, Patti, Scented Tobacco, Gutka of total worth Rs.55,260/- and the officials had seized the product and samples of the product are taken. Accordingly, first information came to be registered.

3. Apprehending arrest, the applicant filed application under Section 438 of the Criminal Procedure Code, 1973 before the Sessions Court. The learned Sessions Court rejected the application by order dated 6 April 2023. The applicant has, therefore, filed present anticipatory bail application.

4. Learned advocate for the applicant submitted that the applicant has not been named in the first information report. FSL report is yet to be received. He has been falsely implicated. According to him, there is no material to show that the applicant has administered contraband substance. The prohibited substances has been seized and, therefore, custodial interrogation of the applicant is not necessary. He is ready to cooperate with the investigation.

5. Per contra, learned APP submitted that the applicant is in the business of supplying prohibited substances. It is necessary to unearth traces of larger supply of banned substances. He submitted that the coordinate Benches of this Court in case of **Sagar Sadashiv Kore v. State of Maharashtra**, reported in

2021 SCC OnLine Bom 6568 and in **Ankush v. State, thr PSO**, reported in 2020 SCC OnLine Bom 11384 and **Pathan Shafi Khan Rehmat Khan v. State of Maharashtra** reported in 2021 SCC OnLine Bom13367 and unreported judgment of this Court in Anticipatory Bail Application No.483 of 2021 (Mohammed Ali Raheman Alias MohammedAli Abdul Raheman Shaikh v. The State of Maharashtra) decided on 24 March 2021 refused to grant pre-arrest protection to the applicants therein having similar role attributed to the applicants therein.

6. I have considered the submissions on behalf of both the sides. Prima facie, prohibited substance was seized from applicant. Considering the nature of allegations against the applicant, it is necessary that detailed investigation as regards existence of any racket operating in prohibited substance need to be investigated. It is also necessary to investigate source of such supply and acquisition. It is also necessary to investigate into the names and identity of purchasers of the prohibited substance from the applicants. In so far as FSL report is concerned, it will be received by the investigating agency during investigation. However, for adjudicating prima facie case receipt of such report is not necessary.

7. Learned Single Judge of this Court in **Ankush** (supra) in paragraph 8 observed thus:

“8. It is not in dispute that Gutka (chewing tobacco made from crushed areca nut, tobacco, catechu, paraffin wax, slaked lime etc.) and Pan Masala (combination of betel leaf and areca nut with or without tobacco) are seriously detrimental to health and the consumption thereof is

identified as a major cause of oral cancer. The said products contain carcinogens and are known to be highly addictive. The State Government has exercised, from time to time, the statutory power under the FSS Act to prohibit the manufacture, storage, distribution and transport or sale of tobacco, whether flavoured, scented or mixed with other ingredients such as nicotine, menthol etc.”

8. The coordinate Bench has relied upon an unreported judgment of the Division Bench of this Court (Aurangabad Bench) in the case of **Zahir Ibrahim Panja v. State of Maharashtra** in Criminal Application No.4968 of 2016.

9. In the case of **Pathan Shafi Khan Rehemat Khan** (supra), co-ordinate Bench of this Court has considered the issues of applicability of Section 328 of the Indian Penal Code. I respectfully agree with the views taken by the co-ordinate Bench.

10. The applicant has antecedents of similar offences to his discredit. Therefore, in my opinion, considering the allegations against the applicant, no case for grant of pre-arrest protection is made out.

11. The anticipatory bail application is, therefore, rejected. No costs.

12. At this stage, learned advocate for the applicant prayed for grant of ad-interim relief as this Court had protected him during pendency of this application. Considering the nature of allegations, ad-interim relief granted earlier shall continue for a period of two weeks from today.

(AMIT BORKAR, J.)