

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 387 OF 2023

Kalyan Vitthal Kharat ... Applicant

Versus

The State of Maharashtra ... Respondent

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Ms. Priyanka Gupta instructed by Mr. Rupesh Zade for the Applicant.
Ms. Rutuja Ambekar, APP for the State.

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CORAM : N.R. BORKAR, J.

DATED : 27 FEBRUARY 2023

P.C. :-

. This is an application filed under Section 438 of the Code of Criminal Procedure, 1973 for anticipatory bail.

2. The applicant is apprehending his arrest in Crime No. 285 of 2022 registered at Baramati City Police Station, for the offences punishable under Sections 188, 272, 273, 328 of Indian Penal Code and Sections 26(2)(iv), 27, 30(2), 31, 59 of Food Safety and Standards Act, 2011.

3. I have heard the learned Counsel for the applicant and the learned APP for the State.

4. On 9 June 2022, on the basis of secret information, tempo bearing registration No.MH-12-QG-8872 was intercepted and Gutkha

packets (prohibited tobacco products) worth Rs.11,08,800/- were found in the said tempo. According to the prosecution, the said Gutkha packets were stored by the present applicant and other co-accused for the purpose of sale.

5. The learned counsel for the applicant submits that except offence punishable under Section 328 of IPC, all other offences are bailable. He submits that this Court has held that mere possession, storage or sale of Gutkha packets would not attract Section 328 of the IPC. It is submitted that nothing is to be recovered from the applicant and therefore, his custodial interrogation is not necessary. It is therefore, submitted that the applicant may be granted anticipatory bail.

6. On the other hand, the learned APP appearing for the State submits that considering the nature of offence, the applicant may not be released on anticipatory bail.

7. This Court has held that mere possession or sale of Gutkha products would not attract Section 328 of the IPC and the said issue is still pending before the Hon'ble Supreme Court. All other offences are bailable. Considering the overall facts and circumstances and as there are no other criminal antecedents of similar nature, I am inclined to release the applicant on anticipatory bail. In the result the following order is passed :

(i) Application is allowed.

(ii) In the event of arrest of the applicant - Kalyan Vitthal Kharat in Crime No. 285 of 2022 registered at Baramati City Police Station, for the offences punishable under Sections 188, 272, 273, 328 of Indian Penal Code and Sections 26(2)(iv), 27, 30(2), 31, 59 of Food Safety and Standards Act, 2011, he shall be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

(iii) The applicant shall attend the concerned police station as and when called by the Investigating Officer and shall co-operate in the investigation.

(N.R. BORKAR, J.)

KANCHAN
PRASHANT
DHURI

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