

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.394 OF 2023

Mohammad Rijwan Mohammad Gufran ...Applicant
V/s.
The State of Maharashtra ...Respondent.

Mr. M. N. Sandhyanshiv for the Applicant.
Mr. Amit Palkar, APP for the Respondent/State

CORAM : N.R. BORKAR, J.
DATE : 09.02.2023.

P.C. :

- 1] This is an application under Section 438 of Code of Criminal Procedure for anticipatory bail.
- 2] The applicant is apprehending his arrest in Crime No.8 of 2023 registered at Killa police station, Nashik (Rural) for the offences punishable under Sections 328, 272, 273, 188 read with 34 of the Indian Penal Code, 1860 (IPC).
- 3] I have heard the learned counsel appearing for the applicant and the learned APP for the respondent / State.
- 4] On 16 January 2023, on the basis of secrete information, a raid was conducted at the house of the present applicant and co-accused and prohibited Tobacco products (Guthka packets) were found in their house.

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.

ORDER

A) Anticipatory Bail Application is allowed.

B) In the event of arrest of the applicant in Crime No.8 of 2023 registered at Killa police station, Nashik (Rural) for the offences punishable under Sections 328, 272, 273, 188 read with 34 of the IPC, he shall be released on bail on executing

P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

C) The applicant shall attend the concerned police station as and when called by the Investigating Officer and shall cooperate in the investigation.

[N.R.BORKAR, J.]