

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 496 OF 2023

Rajkumar Balasaheb Sapate

..Applicant

vs.

State of Maharashtra

...Respondent

Mr.Tushar Sonawane – Advocate for Applicant.

Mr.Sanjay Jagtap – API – Kasarwadavali Police Station – Thane City.

CORAM : S. M. MODAK, J.

DATED : 19TH JUNE 2023

P. C. :

1. Heard learned Advocate Shri.Sonawane for the Applicant and learned APP for the Respondent-State.

2. Mr.Sonawane has apprised the Court about various orders passed by the Division Bench of this Court, learned Single Judge and by Apex Court. He placed on record summary giving chronology of these orders. It is taken on record and marked as 'Annexure-X'. From the above orders, one order dated 14th June, 2022 passed in the case of *Sanjay Ramdas Ranware V/s. The State of Maharashtra*¹ (Coram : Shri. N. J. Jamdar, J.) is placed on record. It is taken on record and

¹ ABA No. 1365 of 2022 : 14th June, 2022 : Bombay High Court

marked as 'Annexure Y'. Considering the fact that the entire quantity of the contraband articles is seized, the learned Single Judge opined that the custodial interrogation of the Applicant is not warranted. Hence, Anticipatory Bail was granted.

3. From the chronology of the orders submitted today, it is true that different views are expressed by the Division Bench on one hand and by the learned Single Judge, on the other hand. It is also submitted that the Hon'ble Supreme Court in the matter of ***The State of Maharashtra and Ors. V/s. Anand Ramdhani Chaurasia and Anr.***² has stayed the operation of the judgment passed by the Division Bench (wherein the view is taken that unless there is administration of the contraband articles, the provisions of Section 328 of the Indian Penal Code, 1860 ["IPC"] cannot be invoked). However, it is also true that the Hon'ble Supreme Court in the matter of ***Parvez Ansari & Anr. V/s. The State of Maharashtra***³ and other connected matters, has protected the Petitioners subject to the direction to cooperate the investigation.

4. In view of the above divergence of opinions, it is not proper to go into the contentious issues at this stage. In view of that, I have

² *Special Leave Petition (Criminal) Diary No.8224 of 2020 : 31st August, 2020 : Supreme Court*

³ *SLP (Criminal) 1221 of 2023, decided on 06/02/2023*

heard both the sides, on the factual aspects.

5. The FIR is registered with Kasarvadawali Police Station - Thane at C.R. No. 246 of 2020 on 3rd October, 2020. It is for the offences punishable under Sections 188, 269, 272, 273, 328 read with 34 of IPC, Section 51(b) of Disaster Management Act, 2005 as well as under Sections 26(2)(i), 27(2)(e), 26(2)(iv), 30(2)(a) and 59 of Food and Safety Act, 2006. It is registered against in all 11 persons. Whereas, present Applicant is named as Accused No.11.

6. The sum and substance of the allegation is that five vehicles were intercepted which were found parked behind Bitcoin Company Compound, Ghodbunder Road, Thane and one of the vehicles i.e. Tata Tempo MH 04-HY-3050 belongs to the Applicant and his name is disclosed during the investigation. Furthermore, contraband articles / seized material viz., panmasala and tobacco was found from these vehicles worth Rs.1,70,45,496/-.

7. The Applicant claims that the said tempo was purchased by him from one Jayveer Shettigar and then he has given it to one Rajkumar Tiwari on hire basis vide agreement dated 8th August, 2019 for a period of 36 months. When the truck was intercepted, said Tiwari was in possession and hence, the Applicant cannot be

blamed. Hence, on apprehension of arrest in the present C.R., he applied for anticipatory bail.

8. Accordingly, all these contraband articles were seized from these vehicles. The persons who were found there, they were arrested and an FIR came to be lodged against them. That is why, on the basis of apprehension, he had first moved to the Court of Sessions – Thane and thereafter, he approached this Court. This Court has already granted an interim protection as per order dated 20th March, 2023. He has already given an attendance to the Police Station. There are no materials pointed out thereby challenging hiring agreement and inspite of that agreement, still the Applicant continues control over the vehicles.

9. In view of the above, this Court is of the view that his custodial interrogation is not required. Hence, Order :-

O R D E R

- (i) The order dated 20th March, 2023 thereby granting an interim protection to the Applicant is confirmed.
- (ii) Applicant is directed to cooperate the Police as and when required.

10. Accordingly, Anticipatory Bail Application is disposed of.

11. All the parties to act on an authenticated copy of this order.

12. These are my *prima facie* observations. Let the learned trial Court need not be influenced by them.

[S. M. MODAK, J.]