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

ANTICIPATORY BAIL APPLICATION NO.641/2022

SHIVRAJ IRAPPA CHINCHOL

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Seema S. Dighe i/b. Adv. Priyal G. Sarda for the
applicant.

Mr. S. H. Yadav, APP for State.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 17, 2023.

P.C. :

1. Heard learned counsel for the applicant and learned
APP for the State.

2. This is an application for pre-arrest bail in respect of
First Information Report (FIR) No.502/2021 registered with
Valsang Police Station, Solapur (Rural), for the offence
punishable under Sections 272, 273 and 328 of the Indian
Penal Code, 1860 (hereafter 'IPC' for short) read with
Sections 3(1)(a), 3(1)(zz), 26(1), 26(2)(1), 26(2)(5), 27(3)(E),
59 of the Food Safety and Standards Act, 2006.

3. On March 24, 2022, a detailed order was passed by
this Court while granting interim protection to the applicant.

The order reads thus:-

“By this Application, the Applicant, apprehending arrest, in connection with investigation of Crime No.502/2021 of Police Station Valsang, Solapur (Rural), under Section 272, 273 and 328 of IPC and Section 3(1)(a), 3(1)(zz), 26(1), 26(2)(1), 26(2) (5), 27(3)(e), 59 of the Food Safety and Standards Act, 2006, is seeking anticipatory bail.

2. The aforesaid crime is registered on the basis of the complaint dated 29 October 2021 lodged by Renuka Ramesh Patil, who is in employment with the Foods and Drugs Department, Solapur. According to the informant, on 25 August 2021, at about 11.45 a.m., a secret information was received that a person by name Amarsiddha Pindipol and the Applicant Shivraj Chinchol are selling fruit beer at Godutai Vidi Gharkul. Accordingly, the informant and the other staff from the Foods and Drugs Apartment raided Om Shanti Drinks of the coaccused Amarsiddha Pindipol and Shree Sai Drinks at Mahatma Phule Nagar, Godutai Vidi Gharkul of the present Applicant, in which both of them were found to be selling fruit beer. Eight bottles of fruit beer of 630 ml each, were obtained and samples were drawn from the said bottles, which were sent to the Public Analyst at Pune on 25 August 2021. The report of the Chemical Analyst was received on 29 October 2021 to the effect that the fruit beer was adulterated and not safe for human consumption. It is in these circumstances, that the complaint came to be filed, which is under investigation.

3. I have heard the learned counsel for the parties. Perused record.

4. The learned counsel for the Applicant has submitted that the only non bailable section which is invoked against the Application is Section 328 of IPC. The learned counsel has placed reliance on the decision of the Supreme Court in **Joseph Kurian & Anr. Vs. State of Kerala [(1994) 6 Supreme Court Cases 535]** and the order dated 30 September 2021, passed in a batch of Anticipatory Bail Applications No.944 of 2020 and others, at the Aurangabad Bench, in order to submit that in similar circumstances, it has been held that Section 328 of IPC may not be attracted as there was no attempt to administer any intoxicating or stupefying substance, by the Applicant, with an intention to commit an offence. The learned counsel further pointed out that the learned Single Judge of this Court sitting at Mumbai has taken a contrary view by order dated 6

November 2020 in ABA (Stamp) No.2489/2020 which order is subject matter of challenge before the Supreme Court in Special Leave to Appeal (Cri.) No.6788/2021.

5. Learned APP has submitted that a warrant has been issued against the Applicant and therefore the Application for anticipatory bail is not competent.

6. The learned counsel for the Applicant has placed reliance on the decision of the Supreme Court in **Lavesh Vs. State (NCT of Delhi) [(2012) 8 SCC 730]** in order to submit that it is only where a proclamation is issued under Section 82 of the Cr.P.C. declaring the accused as a proclaimed offender / absconder, that it has been held that the Application is not maintainable. It is submitted that at present there is no such proclamation shown to be issued against the Applicant. He has also placed reliance on the decision of the Single Judge of this Court in **Akhalaq Ahmed F. Patel Vs. The State of Maharashtra [1998 ALL MR (Cri) 1070]** in which this Court has held that anticipatory bail can be granted even after summons or warrant is issued against the Accused.

7. In my considered view, the Application involves both these issues about the maintainability of the Application in the wake of issuance of a Non Bailable Warrant and secondly about the scope and ambit of Section 328 of IPC. It may be noted that the Supreme Court in Special Leave to Appeal (Cri.) No.6788/2021 has granted interim protection to the Petitioner / Accused therein by order dated 21 September 2021. The said matter is pending before the Hon'ble Supreme Court.

8. In such circumstances, for the present, the following order is passed.

ORDER

(i) In the event of his arrest in connection with investigation of Crime No. 502/2021 of Police Station Valsang, Solapur (Rural), the Applicant Shivraj Irappa Chinchol, be released on bail on executing a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties, in the like amount.

(ii) The Applicant shall report to the Investigating Officer on 30/3/2022 and 31/3/2022 between 11.00 a.m. to 1.00 p.m. and as and when required by the Investigating Officer and shall cooperate with the Investigating Agency.

(iii) The Applicant shall not tamper with the prosecution evidence / witnesses.

(iv) The Applicant shall not indulge or engage himself in

any similar offence, while on bail.

(v) In the event of breach of any of the conditions, the bail is liable to be cancelled.

(vi) This order shall remain in force till next date.

Stand over to 18 April 2022.”

4. There is nothing on record to indicate that the applicant has not co-operated with the investigation. In any case, I propose to pass a further order that the applicant should co-operate with the investigation and attend the investigating officer as and when called.

5. The applicant was found selling eight bottles of fruit beer. A raid was conducted on the shop from where eight bottles of fruit beer was seized. They were sent for analysis to the Chemical Analyst. The Chemical Analyst report reveals that the same are unsafe for consumption.

6. Learned counsel for the applicant submits that the applicant had no intention to cause hurt to any person. In my opinion, *prima facie*, the provisions of Section 328 of the IPC may not be attracted in the present case. Except for Section 328 of the IPC all offences are bailable. Eight bottles of fruit beer are already seized. In this view of the matter, the custodial interrogation of the applicant is not required. It is submitted that the applicant is no more selling fruit beer.

There are no criminal antecedents reported against the applicant. Hence the following order.

ORDER

(a) In the event of arrest of the applicant-Shivraj Irappa Chinchol in connection with FIR No.502/2021 registered with Valsang Police Station, Solapur (Rural), the applicant shall be released on bail on his furnishing P. R. bond in the sum of Rs.15,000/- with one or more sureties in the like amount.

(b) The applicant shall report to the concerned police station on 20/1/2023 and 21/1/2023, between 11.00 a.m. and 2.00 p.m. and thereafter, as and when called.

(c) The applicant to co-operate with the investigating officer.

(d) The applicant shall furnish the details of his residential address and phone number to the investigating officer.

(e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of the case so as to dissuade him from disclosing the facts to Court or any Police

Officer and should not tamper with evidence.

7. The application is disposed of.

(M. S. KARNIK, J.)