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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.748 OF 2023**

1. Shakil Ahmed Abdul Jaish Shaikh ...
2. Waseem Abdul Jaish Shaikh ...Applicants

vs.

State of Maharashtra ...Respondent

Mr. Kunal Bilaney h/f Kushal Mor for the Applicant.
Mr. H. J. Dedhia APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 8TH JUNE 2023

P. C. :

1. Heard learned Advocate for the Applicants and learned APP for the Respondent-State.
2. The Investigating Officer is present. As per order dated 31st March 2023, the Applicants have already been granted interim protection. One of the contention raised on that occasion was that the Division Bench of this Court has already held in case of ***Anand Ramdhani Chaurasia and Anr. Vs. State of Maharashtra***¹ provisions

1 2019 SCC Online Bom 1857

of section 328 of IPC cannot be invoked if there is no administering of any stupefying substance. The word used “causes” in section 328 of IPC is interpreted in para 32. The view taken is challenged before the Supreme Court by way Special Leave Petition in case of ***Chandrakant Jyotiram Kshirsagar Vs. State of Maharashtra***². It is submitted that the Hon’ble Supreme Court has started hearing arguments but yet final judgment is not delivered. But the observations are stayed.

3. The judgment in case of ***Anand Ramdhani Chaurasia*** (supra) and similar view taken by the Division Bench of this Court (Aurangabad Bench) in case ***Ganesh Pandurang Jadhavo and Anr. Vs. The State of Maharashtra***³ are produced. The Hon’ble Supreme Court in the matter of *Parvez Ansari and Anr. Vs. The State of Maharashtra*⁴ and other Connected matters has protected the Petitioners subject to the direction to co-operate the investigation. So also this Court in case of ***Sanjay Ramdas Ranware Vs. The State of Maharashtra***⁵ in Anticipatory Bail Application No. 1365 of 2022 delivered by Coram:- Shri N. J. Jamadar, J. is placed on record. It is

2 SLP (Cri.) No.3054 of 2023 dt. 20/03/2023, Supreme Court of India

3 Writ Petition No.1027 of 2015 dt. 15/10/2020

4 SLP (Criminal) 1221 of 2023, decided on 06/02/2023.

5 ABA No.1365 of 2022, 14/06/2022 Bombay High Court

taken on record and marked as '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. So also in case of ***Chandrakant Jyotiram Kshirsagar*** (supra) the Hon'ble Supreme Court has observed that the petitioners shall not be arrested in connection with the offence subject to condition that the petitioners shall cooperate with the investigation.

4. The FIR is registered at Rabodi police station on 19th February 2023, for the offences punishable under sections 272, 273, 328 read with 34 of the Indian Penal Code, 1860, and under sections 26(2)(i), 27(3)(e), 26(2)(iv) and 30(2)(a) of the Food Safety and Standards Act, 2006. It is on the complaint of one Girish Uttam Patil who is a Police Constable. On information, the Police intercepted one car and they found objectionable articles. Two persons were found and the articles of various description were seized. During investigation, it was revealed that they have purchased these articles from the present Applicants. His Anticipatory Bail Application was rejected the trial Court.

5. Except Section 328 of IPC, all other offences invoked are bailable offences. In view that this Application can be disposed of by granting protection from arrest. In view of above, the following order is passed :

O R D E R

- (a) In the event of arrest, in C.R. No.42 of 2023, registered with Rabadi police station police, Thane for the offences punishable under sections 272, 273, 328 read with 34 of IPC and section 26(2)(i), 26(2)(iv), 27(3)(e) and 30(2)(a) of the Food and Safety and Standards Act, 2006, Applicant No.1-Shakil Ahmed Abdul Jaish Shaikh and Applicant No.2-Waseem Abdul Jaish Shaikh be released on bail on furnishing personal bond and surety bond of Rs.25,000/- each.
- (b) The Applicants shall not threaten the prosecution witnesses or allure them in any manner
- (c) The Applicants shall give attendance to the Rabadi police station, Thane on every first and third Thursday of every month from 10 am to 12 noon until filing of the charge-sheet.
- (d) Needless to say, violating of the condition above will make the Applicant liable for cancellation of anticipatory bail, after

notice to the Applicant.

6. Application is disposed of accordingly.
7. These are my prima facie observations and the trial Court may not be influenced by that.
8. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]