

AGK

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

ANTICIPATORY BAIL APPLICATION NO.837 OF 2023

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2023.07.11
10:32:16
+0530

Mayur Rishikumar Agarwal

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Rajesh More for the applicant.

Mr. Amit A. Palkar, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JUNE 16, 2023

PC.:

1. The applicant is seeking relief under Section 438 of the Criminal Procedure Code, 1973 in connection with C.R. No.94 of 2023 dated 10 March 2023 for offences punishable under Section 188, , 272, 273, 328 of the Indian Penal Code, 1860 and under Section 30(2)(a), 26(2)(i), and 26(2)(iv) of the Food Safety and Standard Act, 2006.

2. The case of prosecution in short is that on 9 March 2023 at 17.00 hours they seized huge quantity (20 types) of pan masala (prohibited substances) worth Rs.2,47,676/-. Based on statement of person from whose custody banned substances were seized, name of the applicant surfaced. The accused stated in his statement that the applicant is the supplier of banned substances.

3. Apprehending arrest, the applicant filed application under Section 438 of the Criminal Procedure Code, 1973 before the Sessions Court. The learned Sessions Court rejected the application by order dated 16 March 2023. Aggrieved thereby, the applicant has filed present anticipatory bail application.

4. *Learned advocate for the applicant submitted that the applicant has been falsely implicated.* Learned advocate for the applicant relying on unreported orders of this Court in a group of matters, lead matter being Anticipatory Bail Application No.944 of 2020 (Manjubhai Manchakrao Rokde v. The State of Maharashtra) decided on 30 September 2021 and Anticipatory Bail Application (St.) NO.2451 of 2020 (Vinod Ramnath Gupta v. The State of Maharashtra) decided on 6 November 2020 submitted that learned Judge of this Court granted anticipatory bail to the applicants/accused of commission of offence under Section 328 of the Indian Penal Code. He also invited my attention to the judgment of the Apex Court in **S. Kasi v. State through the Inspector of Police Samaynallur Police Station Madurai District** reported in 2020 SCC OnLine SC 529 to urge that the principle of law enunciated by another Bench is binding on coordinate Bench of the High Court and the only course available is to refer the matter to the Larger Bench. The prohibited substances has been seized and, therefore, custodial interrogation of the applicant is not necessary. He is ready to cooperate with the investigation.

5. Per contra, learned APP submitted that the applicant is in the business of supplying prohibited substances. It is necessary to

unearth traces of larger supply of banned substances. He submitted that the coordinate Benches of this Court in case of **Sagar Sadashiv Kore v. State of Maharashtra**, reported in 2021 SCC OnLine Bom 6568 and in **Ankush v. State, thr PSO**, reported in 2020 SCC OnLine Bom 11384 and unreported judgment of this Court in Anticipatory Bail Application No.483 of 2021 (Mohammed Ali Raheman Alias MohammedAli Abdul Raheman Shaikh v. The State of Maharashtra) decided on 24 March 2021 refused to grant pre-arrest protection to the applicants therein having similar role attributed to the applicants therein.

6. I have considered the submissions on behalf of both the sides. I have carefully scrutinized the case diary. Prima facie, the statement of the person from whom prohibited substance was seized named the applicant as supplier. Considering the nature of allegations against the applicant, it is necessary that detail investigation as regards existence of any racket operating in prohibited substance need to be investigated. It is also necessary to investigate source of such supply and acquisition. It is also necessary to investigate into the names and identity of purchasers of the prohibited substance from the applicant.

7. Learned Single Judge of this Court in **Ankush** (supra) in paragraph 8 observed thus:

“8. It is not in dispute that Gutka (chewing tobacco made from crushed areca nut, tobacco, catechu, paraffin wax, slaked lime etc.) and Pan Masala (combination of betel leaf and areca nut with or without tobacco) are seriously detrimental to health and the consumption thereof is identified as a major cause of oral cancer. The said products

contain carcinogens and are known to be highly addictive. The State Government has exercised, from time to time, the statutory power under the FSS Act to prohibit the manufacture, storage, distribution and transport or sale of tobacco, whether flavoured, scented or mixed with other ingredients such as nicotine, menthol etc.”

8. The coordinate Bench has relied upon an unreported judgment of the Division Bench of this Court (Aurangabad Bench) in the case of **Zahir Ibrahim Panja v. State of Maharashtra** in Criminal Application No.4968 of 2016.

9. In so far as the judgment in the case of **Manjubhai Rokde** and **Vinod Ramchandra Gupta** (supra) are concerned, it needs to be noted that in both the orders no principle of law arose for consideration and no principle of law was laid down. It is well settled that an order of bail application is summary in nature based on summary facts which can never be relied as a precedent or can be cited as an authority laying down proposition of law by this Court unless and until principle of law arise for consideration and the order lays down principle of law. A decision is an authority for what it actually decides. The essence of a decision is its ratio and not every observation found therein nor what legally follows from the observations made in the order. A case cannot be an authority on the point of a fact. Each case has to be decided in the light of circumstances existing in it. A precedent is a judicial decision which lays down a principle of law. Generally bail orders in their operative part proceed on peculiar facts of each case. Sometimes facts are not stated in the order considering complexity of facts and circumstances of the case. Therefore, generally bail

orders without laying down principle of law cannot be regarded as an authority on a point of fact. Therefore, in my opinion, both the judgments cited by the advocate for the applicant in the absence of proposition of law being decided cannot be treated as a precedent laying down principle of law. The orders relied upon by the applicant, therefore, are of no help to the applicant.

10. Therefore, in my opinion, considering the allegations against the applicant, no case for grant of pre-arrest protection is made out.

11. The anticipatory bail application is, therefore, rejected. No costs.

12. At this stage, learned advocate for the applicant prayed for grant of ad-interim relief as the Sessions Judge had protected him during pendency of the application. Considering the nature of allegations, ad-interim relief granted earlier shall continue for a period of two weeks from today.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 10 July 2023 to correct first sentence of paragraph 4.