

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

ANTICIPATORY BAIL APPLICATION NO. 862 OF 2023

Siraj Imtiyaj Shaikh

...Applicant

vs.

State of Maharashtra

...Respondent

Mr.Tushar Sonawane a/w Ms.Shradha Nakadi – Advocate for Applicant.

Mr.H.J.Dedhia – APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 22ND JUNE 2023

P. C. :

1. Heard learned Advocate Shri.Sonawane for Applicant and learned APP. The officer from Manor Police Station is present.

2. While transporting the contraband in the form of tobacco, the Police have intercepted the swift car No. MH 48 BH 7556 near Manor. The present Applicant was driving that car. On account of an apprehension, he ran away from the car. When the car was searched, the Police found the tobacco which is prohibited amounting to Rs.3,95,664/-. An FIR is lodged on 13th December, 2022 at C.R. No. 301 of 2022 under Sections 328, 272, 273, 188 of Indian Penal Code, 1860 [“IPC”] and under Sections 26(2), 4 and 30(2)(a) of

Food Safety and Standards Act, 2006.

3. Learned Advocate Shri.Sonawane relied upon the view taken by the Division Bench in case of ***Anand Ramdhani Chaurasia and Anr. V/s. State of Maharashtra***¹ and also the view taken by the Division Bench (Aurangabad Bench) in case of ***Ganesh Pandurang Jadhao and Anr. V/s. The State of Maharashtra***². It is observed that unless the seized article is administered, the provisions of Section 328 of IPC cannot be invoked.

4. There is a challenge to this view before Hon'ble Supreme Court in case of *The State of Maharashtra and Ors. V/s. Anand Ramdhani Chaurasia and Anr.*³ There is stay granted. However, it is also true that the Hon'ble Supreme Court in the matter of ***Pervez Ansari and Anr. V/s. The State of Maharashtra***⁴ and other connected matters has protected the Petitioners subject to the direction to cooperate the investigation.

5. Learned APP submitted that the Police wants to know the source of that contraband. It is submitted that in fact, the owner of the car is other person and during investigation, it was disclosed that he had given this car on rent to the present Applicant. According

1 2019 SCC Online Bom 1857

2 Writ Petition No.1027 of 2015 : 15th October, 2020 : Bombay High Court (Bench at Aurangabad)

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

4 SLP (Criminal) 1221 of 2023 : 6th February, 2023 : Supreme Court

to learned APP, it is the Applicant only who can tell from where he has brought the seized articles.

6. I think, the purpose can be served even by giving attendance to the Police. Except Section 328 of IPC, other offences are bailable.

Hence, order :-

ORDER

- (i) Application is allowed.
 - (ii) In case of an arrest in connect with C.R.No. 301 of 2022 registered with Manor Police Station – Palghar for the offences punishable under Sections 328, 272, 273, 188 of IPC and Sections 26(2), 4 and 30(2)(a) of Food Safety and Standards Act, the Applicant - Siraj Imtiyaj Shaikh be released on furnishing personal bond and surety bond of Rs.25,000/-.
 - (iii) Applicant is directed to give attendance to Manor Police Station – Palghar on Monday and Thursday from 10.00 to 12.00 noon till filing of chargesheet.
 - (iv) In case of breach of any of the conditions, the bail of the Applicant is liable to be cancelled after notice.
7. Application is disposed of in the aforesaid terms.
8. These are my prima facie observations. Let the learned trial Court need not be influenced by them.
9. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]