

VRJ

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

ANTICIPATORY BAIL APPLICATION NO.890 OF 2023

Irfan S/o Budhan Shaikh	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Nitin Gaware Patil for the applicant.

Ms. Rutuja Ambekar, APP for the respondent/State.

Mr. Dnyaneshwar Badgujar, API, Pawarwadi Police
Station is present

CORAM : AMIT BORKAR, J.

DATED : JUNE 13, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.20 of 2023, dated 20th January 2023 registered with Pawarwadi Police Station, Taluka Malegaon, District Nashik Rural for offences punishable under sections 328, 420, 175, 272, 274 of the Indian Penal Code, 1860 and sections 11(1)(g) and 12 of the Prevention of Cruelty to Animals Act, 1960, the applicant has filed present anticipatory bail application under section 438 of the Criminal Procedure Code, 1973.

2. According to prosecution, on 20th January 2023, based on secret information that the co-accused has illegally stored the Injections for mulching the buffaloes at Gut No.51, Plot No.94 situated at Malde Shivar, Malegaon, raided the premises and

recovered Oxytocin Injections from the co-accused. From the spot, the investigating agency recovered five drums filled with liquid, rubber caps, sealing machine, cardboard boxes, suspected oxytocin and other material.

3. Apprehending arrest, the applicant filed an application before the learned Session Judge which came to be rejected by order dated 15th February 2023. The Sessions Judge rejected the application based on the fact that Oxytocin Injections were sold to the applicant and, therefore, larger racket needs to be investigated.

4. Learned advocate for the applicant states that the Oxytocin Injection is not poisonous substance but scheduled drug. At the most, the applicant can be prosecuted for violation of provisions of the Drugs and Cosmetics Act, 1940, which prohibits sale and possession of scheduled drugs; however, in the facts of the case section 328 is not attracted. He states that the applicant is ready to cooperate with the investigation and custodial interrogation is not necessary.

5. Per contra, learned APP submitted that the applicant was found to have been sold twenty boxes of Oxytocin Injections which by no stretch of imagination be termed as for his personal use. The statement of accused No.1 indicates that he had sold twenty boxes of injections to the applicant and, therefore, involvement of the applicant in the offences alleged is clear. The custodial interrogation is, therefore, necessary to ascertain possibility of existence of racket.

6. I have considered the material on record and the case diary.

On consideration of overall material including report of the Food and Drugs Department, prima facie it appears that the Oxytocin Injection is a scheduled drug which cannot be sold or possessed without licence. The statement of the accused No.1 indicates that he has sold the drug in question to the applicant.

7. Considering the quantity and the purpose for which the applicant has purchased the Oxytocin Injections, in my opinion, the custodial interrogation of the applicant is not necessary. At this stage there is no material on record to suggest that the material found in possession of the applicant is poisonous in nature; however, during the course of investigation it will always be open for the prosecution to ascertain exact nature of the material found and accordingly proceed with the prosecution of the accused. This Court by order dated 27th March 2023 protected the applicant from arrest. Hence, following order:

a) In the event of arrest of the applicant in connection with C.R. No.20 of 2023, dated 20th January 2023 registered with Pawarwadi Police Station, Taluka Malegaon, District Nashik Rural for offences punishable under sections 328, 420, 175, 272, 274 of the Indian Penal Code, 1860 and sections 11(1)(g) and 12 of the Prevention of Cruelty to Animals Act, 1960, he be released on bail on furnishing PR Bond in the sum of Rs.50,000/- with one or two sureties in the like amount;

b) The applicant shall remain present before the investigating officer on 16th, 17th and 19th June 2023 between

11:00 a.m. to 02:00 p.m. and, thereafter, as and when called by the investigating officer;

c) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

d) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

e) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case.

8. The anticipatory bail application stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)