

AGK

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

ANTICIPATORY BAIL APPLICATION NO.913 OF 2023

Nilesh Harkchand Lalwani ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Tushar Sonawane with Ms. Pooja Satpute for the applicant.

Mr. Pandurang H. Gaikwad, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JULY 10, 2023

P.C.:

1. The applicant is seeking relief under Section 438 of the Criminal Procedure Code, 1973 in connection with C.R. No.255 of 2022 dated 22 December 2022 registered with Gokul Shirgaon Police Station for offences punishable under Sections 188,. 272, 273, 328, 34 of the Indian Penal Code, 1860 with Section 59 of the Food Safety and Standard Act, 2006.

2. The case of prosecution is that on 22 December 2022 the respondent intercepted one Eicher Truck bearing registration No.MH-06-BD-9833 near Shahu Toll Plaza, Kolhapur. Accused Nos.1 and 2 were found in possession of the prohibited material i.e. Gurakha and Pan Masala amounting to Rs.14,13,000/-.

Accordingly, first information report was lodged.

3. Apprehending arrest, the applicant filed application under Section 438 of the Criminal Procedure Code, 1973 before the Sessions Court. The learned Additional Sessions Judge, Kolhapur rejected the application by order dated 2 February 2023. The applicant, therefore, filed present anticipatory bail application.

4. Learned advocate for the applicant submitted that the applicant has not been named in the first information report. He has been falsely implicated. According to him, there is no material to show that the applicant has administered contraband substance. 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 the owner of the 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 **Pathan Shafi Khan Rehmat Khan v. State of Maharashtra** reported in 2021 SCC OnLine Bom13367 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. Prima facie, person from whom prohibited substance was seized has named applicant as owner. Considering the nature of allegations against the applicant, it is necessary that detailed 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 the case of **Pathan Shafi Khan Rehmat Khan**

(supra), co-ordinate Bench of this Court has considered the issues of applicability of Section 328 of the Indian Penal Code. I respectfully agree with the views taken by the co-ordinate Bench.

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, therefore, stands rejected. No costs.

12. Considering the fact that the applicant was protected by ad-interim order during the pendency of present anticipatory bail application, the ad-interim relief will continue for a period of two weeks from today.

(AMIT BORKAR, J.)