

AGK

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

ANTICIPATORY BAIL APPLICATION NO.1588 OF 2023

Deva Ram Devasi

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Shreyas Barsawade for the applicant.

Mr. Pandurang Gaikwad, APP for the State.

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CORAM : AMIT BORKAR, J.

DATED : JUNE 6, 2023

PC.:

1. This is an application under Section 438 of the Criminal Procedure Code, 1973 in connection with C.R. No.199 of 2023 registered with Chikhali Police Station for the offences punishable under Sections 188, 272, 273, 328 & 34 of the Indian Penal Code, 1860 read with Section 30(2)(a) of the Food Safety & Standards Act, 2006.

2. The case of the prosecution in short is as under:

One Uddhav Badrinath Khedkar, happens to be a Police Constable, attached with Crime Branch Unit-2, Pimpri Chinchwad lodged report against the applicant alleging that on 26 March 2023 the applicant was found in possession of prohibited articles (gutkha) which was found in Shri Gurudatta Kirana Store. The

price of the seized gutkha was approximately Rs.2,23,821/-.

3. The applicant, therefore, filed an application under Section 439 before the learned Sessions Judge, Pune which has been rejected on 12 May 2023. The applicant, therefore, filed present anticipatory bail application.

4. Learned advocate for the applicant invited my attention to the ingredients of the first information report and the order passed by the learned Sessions Judge as regards co-accused (owner of the shop). He submitted that the applicant has no connection with the goods seized. Since the goods are already seized and the applicant is ready to cooperate with the investigation, custodial interrogation of the applicant is not required. According to him, the statement of co-accused cannot be taken at its face value at this stage.

5. Per contra, learned APP submitted that the offence under Section 328 of the Indian Penal Code which affects public health. The goods seized are prohibited goods. He invited my attention to the statements of neighbour and the co-accused, which suggest that the goods were kept in the store of co-accused by the applicant.

6. Having considered the case diary and the material on record, it appears that the co-accused who is owner of the shop where prohibited goods were kept was owned by the co-accused. The Additional Sessions Judge, Pune by order dated 21 April 2023 released the co-accused (owner) under Section 439 of the Criminal Procedure Code, 1973. The ownership of prohibited goods is a

matter of investigation which can be done if the applicant cooperates with the applicant. Other angles can also be investigated without custodial interrogation of the applicant.

7. Taking overall view of the matter, in my opinion, the applicant deserves to be protected. Hence, following order:

a) In the event of arrest of the applicant in connection with C.R. No.199 of 2023 registered with Chikhali Police Station for the offences punishable under Sections 188, 272, 273, 328 & 34 of the Indian Penal Code, 1860 read with Section 30(2)(a) of the Food Safety & Standards Act, 2006, the applicant shall be released on bail on furnishing P.R. Bond in the amount of Rs.30,000/- along with one or two sureties in the like amount;

b) The applicant shall remain present before the concerned investigating officer on 12, 14 and 16 June 2023 between 11.00 a.m. to 1.00 p.m. and thereafter as and when called by the investigating officer;

c) 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;

d) The applicant shall cooperate with the investigation and make himself available for interrogation whenever required;

8. The anticipatory bail application is allowed in above terms. No costs.

(AMIT BORKAR, J.)