

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

ANTICIPATORY BAIL APPLICATION NO. 1630 OF 2023

Syed Dastageer Syed Gudusabmulla ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Nitin Gaware Patil a/w Mr. Anandmaya Dharde - Advocate for
the Applicant

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

CORAM : S. M. MODAK, J.

DATE : 15th JUNE, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned
APP.

2. This is one more incident wherein the Police have
invoked the provisions of Section 328 of the Indian Penal Code.
Admittedly, there is no allegation that Contraband articles was
administered to any person.

3. Mr. Dedhia, learned APP tried to submit that the present
Applicant is owner of the vehicle in which the Contraband articles
was transported and according to him, he must be aware that these
Contraband will be consumed and as such invocation of Section 328
of the Indian Penal Code is justified.

4. As on today, the Hon'ble Supreme Court in case of the State of Maharashtra and Ors. Vs. Anand Ramdhani Chaurasia and Anr.¹ has stayed the observations of the Division Bench of this Court that in case of gutkha unless it is administered the provision of Section 328 of the Indian Penal Code will not be applicable.

5. In addition to that, Mr. Nitin Gaware-Patil relied upon one Order passed by the Hon'ble Supreme Court on 21/04/2023 in case of Dattatraya Pandurang Khandekar and Anr. Vs. The State of Maharashtra and Anr.², wherein direction was given not to arrest the Petitioner therein.

6. Except Section 328 all other offences are bailable. Mr. Gaware-Patil invited my attention to the averment in the F.I.R.. F.I.R. is lodged at Talbid Police Station on 21/02/2023 under Sections 188, 272, 273, 328 of the Indian Penal Code and Sections 26(2)(i), 26(2)(iv), 27(3)(e), 30(2)(a) and 59 of the Food Safety Act. The allegation is that the present Applicant being the owner of the container and his name was told by the driver Mohammed Tajumuddin Saifnsaab Balwale. He was intercepted on 21/02/2023 at about 3.45 hours at Karad-Masur Road and the Police of Talbid

1 Special Leave to Appeal No. 4101 of 2020 of the Supreme Court

2 Special Leave to Appeal No. 4453-4454 of 2023 of the Supreme Court

Police Station have intercepted them. The present Applicant is prosecuted being owner of that container. The prohibited muddemal is already seized. So I do not think that now his custodial interrogation is necessary. He can be put to conditions.

7. For above discussion, the Applicant deserves to be granted anticipatory bail. Hence the Order:-

- (i) Anticipatory bail application is allowed.
- (ii) In case of arrest in connection with C.R. No. 39 of 2023 registered with Talbid Police Station for the offence punishable under Sections 188, 272, 273, 328 of the Indian Penal Code and Sections 26(2)(i), 26(2)(iv), 27(3)(e), 30(2)(a) and 59 of the Food Safety Act, the Applicant be released on furnishing Personal Bond and Surety Bond in sum of Rs. 25,000/-.
- (iii) Applicant is directed to give attendance to the Talbid Police Station, Karad, District Satara on first and third Saturday from 10.00 a.m. to 12.00 noon till filing of the charge-sheet.

8. It is made clear that the these are my *prima-facie* observations and the trial Court shall decide the case on its own merits without influenced by the observations made in this order.

9. Anticipatory application is disposed of in the aforesaid

terms.

10. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]