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

ANTICIPATORY BAIL APPLICATION NO.2049 OF 2023

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Anil Prabhakar Amrutkar

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Chetan S. Damre for the applicant.

Mr. Amit A. Palkar, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JULY 24, 2023

PC.:

1. Apprehending arrest in connection with C.R. No.230 of 2023 registered with Nashik Road Police Station for offence punishable under Sections 328, 272, 273, 188 read with Section 34 of the Indian Penal Code, 1860- and under Sections 26, 27, 29, 30 and 59 of the Food Safety and Standard Act, 2006, the applicant is seeking relief of pre-arrest bail under Section 438 of the Criminal Procedure Code, 1973.

2. The case of prosecution is that in a raid conducted on 17 May 2023 the applicant was found in possession of prohibited tobacco packets amounting to Rs.9,107/- in Amol Grocery Shop and General Stores, near Subhash Road Math, Railway Station, Nashik Road, Nashik. Accordingly, first information report came to be lodged.

3. Apprehending arrest, the applicant filed application under Section 438 of the Criminal Procedure Code, 1973 before the Sessions Court. The learned Sessions Court rejected the application by order dated 6 July 2023. The applicant has, 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. Learned advocate for the applicant relying on unreported order of this Court (Aurangabad Bench) in Anticipatory Bail Application No.1530 of 2021 (Govind S/o. Namdev Bhakare v. The State of Maharashtra) decided on 12 January 2022 submitted that this Court granted anticipatory bail to the applicant/accused of commission of offence under Section 328 of the Indian Penal Code. He is ready to cooperate with the investigation.

5. Per contra, learned APP opposed the anticipatory bail application. He submitted that there are criminal antecedents to the discredit of the applicant. Learned APP submitted that the applicant is in the business of supplying 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, through PSO**, reported in 2020 SCC OnLine Bom 11384 and **Pathan**

Shafi Khan Rehmat Khan v. State of Maharashtra

reported in 2021 SCC OnLine Bom 13367 and unreported judgment of this Court in Anticipatory Bail Application No.483 of 2021 (Mohammed Ali Raheman Alias Mohammed Ali 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, prohibited substance was seized from co-accused who named the present applicant as supplier. 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. There are criminal antecedents to the discredit of 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. In so far as the order in Anticipatory Bail Application No.1530 of 2021 is concerned, it needs to be noted that in the order no principle of law arose for consideration and no principle of law was laid down. It is well settled that an order of bail application is summary in nature based on summary facts which can never be relied as a precedent or can be cited as an authority laying down proposition of law by this Court unless and until principle of law arise for consideration and the order lays down principle of law. A decision is an authority for what it actually decides. The essence of a decision is its ratio and not every observation found therein nor what legally follows from the observations made in the order. A case cannot be an authority on the point of a fact. Each case has to be decided in the light of circumstances existing in it. A precedent is a judicial decision which lays down a principle of law. Generally bail orders in their operative part proceed on peculiar facts of each case. Sometimes facts are not stated in the order considering complexity of facts

and circumstances of the case. Therefore, generally bail orders without laying down principle of law cannot be regarded as an authority on a point of fact. Therefore, in my opinion, the order cited by the advocate for the applicant in the absence of proposition of law being decided cannot be treated as a precedent laying down principle of law. The order relied upon by the applicant, therefore, is of no help to the applicant.

11. The anticipatory bail application, therefore, stands rejected.
No costs.

(AMIT BORKAR, J.)