

AGK

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

ANTICIPATORY BAIL APPLICATION NO.2072 OF 2023

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2023.08.07
10:47:23
+0530

Nizamuddin Mehboob Shaikh

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Vikas Shivarkar Satpute for the applicant.

Ms. Veera Shinde, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 4, 2023

PC.:

1. Apprehending arrest, the applicant is seeking relief of pre-arrest bail under Section 438 of the Criminal Procedure Code, 1973 in connection with C.R. No.233 of 2023 registered at Rajgad Police Stateion, Pune for offences punishable under Sections 328, 188, 272, 273 read with 34 of the Indian Penal Code, 1860 and Section 50 for committing contravention of Sections 26(2)(p), 26(2)(ap), 28(3)(c), 27(3)(m) of the Food Safety and Standard Act, 2006.

2. The case of prosecution in short is that on 28 May2023 in between 2.30 a.m. and 5.00 a.m. unknownaccused committed theft of truck containing Vimal Panmasala and tobacco which are contraband by the Government. Said truck and the material containing there in were seized by the Rajgad Police Station in

another crime and the truck was hauled near the police station and theft of said truck alongwith articles therein committed by unknown accused. During the investigation, it was found that the accused committed theft of said truck and sale out contraband tobacco and panmasala. The role of this applicant is that he sold out some contraband articles out of seized articles in another crime to accused No.1. Accordingly, first information 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 26 June 2023. Aggrieved thereby, the applicant has 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. Learned advocate for the applicant relying on unreported orders of this Court in a group of matters, lead matter being Anticipatory Bail Application No.944 of 2020 (Manjubhai Manchakrao Rokde v. The State of Maharashtra) decided on 30 September 2021 and Anticipatory Bail Application (St.) No.2451 of 2020 (Vinod Ramnath Gupta v. The State of Maharashtra) decided on 6 November 2020 submitted that learned Judge of this Court granted anticipatory bail to the applicants/accused of commission of offence under Section 328 of the Indian Penal Code. 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 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, thr PSO**, reported in 2020 SCC OnLine Bom 11384 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. I have carefully scrutinized the case diary. Prima facie, the statement of the person from whom prohibited substance was seized named the applicant as seller. Considering the nature of allegations against the applicant, it is necessary that detail 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. The applicant has antecedents of similar offences to his discredit.

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. Therefore, in my opinion, considering the allegations against the applicant, no case for grant of pre-arrest protection is made out.

10. The anticipatory bail application is, therefore, rejected. No costs.

11. At this stage, learned advocate for the applicant prayed for grant of ad-interim relief as this Court has protected him during pendency of the application. Considering the nature of allegations, ad-interim relief granted earlier shall continue for a period of two weeks from today.

(AMIT BORKAR, J.)