

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

BAIL APPLICATION NO. 2239 OF 2023

Usman Gani Mohammad Malbari ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Tushar Sonawane a/w Ms. Pooja Satpute - Advocate for the Applicant

Mr. S. R. Agarkar - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 18th AUGUST, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP.
2. The offence is registered at Shantinagar Police Station on 25/05/2023 at C.R. No. 389 of 2023 under Sections 188, 272, 273 and 328 of the Indian Penal Code and Sections 26(2), 27, 23, 26(2) (iv), 26(2)(a) of Food Safety and Standards Act.
3. When the Police have raided go-down on 24/05/2023 at about 17.35 hours, near Haji Ajmal Apartment. One person tried to run away. He was caught. He is none other than the present Applicant. In the go-down and in the tempo, they find prohibited

articles amounting to Rs. 11,49,000/-. It consists of gutkha of various kinds which is prohibited by the Government notification.

4. Now the charge-sheet is filed. The contention is that the provisions of the Section 328 of the Indian Penal Code cannot be invoked. It is true that the Division bench of this Court in case of *Anand Ramdhani Chaurasia Vs. State of Maharashtra*¹ expressed view that in such matter the provisions of the Section 328 of the Indian Penal Code cannot be invoked. It is true that view is stayed by the Hon'ble Supreme Court. However in certain matters the Hon'ble Supreme Court has granted interim protection subject to the condition to co-operate.

5. In this case already charge-sheet is filed. His detention is no more required. He is entitled to release on bail. Hence following Order:-

ORDER

- (i) Bail application is allowed.
- (ii) Applicant-Usman Gani Mohammad Malbari arrested in connection with C.R. No. 0389 of 2023 registered with Shantinagar Police Station for the offence punishable under Sections 188, 272, 273 and

¹ 2019 ALL MR Cri 4402

328 of the Indian Penal Code and Sections 26(2), 27, 23, 26(2)(iv), 26(2)(a) of Food Safety and Standards Act, be released on bail on furnishing Personal bond and surety bond in sum of Rs. 25,000/-.

(iii) Applicant is directed to co-operate the Police as and when required.

6. Bail Application is disposed of in the aforesaid terms.

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

[S. M. MODAK, J.]