

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

ANTICIPATORY BAIL APPLICATION NO. 3406 OF 2022

Gaurav Jayantbhai Hapani	..Applicant
VS.	
The State of Maharashtra	..Respondent

Vivek B. Rane for the Applicant.

Mr. S. H. Yadav, APP for the State.

H.A. Shaikh, API, Miraroad Police Station.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 19, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for the State.
- 2.** This is an application for pre-arrest bail. The applicant is apprehending arrest in connection with First Information Report No. 07 of 2022 dated 03/01/2022 registered with Mira Road Police Station, for the offences punishable under sections 328, 272, 273 and 34 of Indian Penal Code, 1860 and under sections 26(2)(i), 26(2)(iv), 3, 59, 27(3)(d), 27(3)(e) of the Food Safety and Standard Act, 2006.
- 3.** By the order dated 09/12/2022, the applicant was

protected by an interim order. The order reads thus:

“1. From the applicant what is seized is prohibited substance in form of Gutka, pan masala, scented tobacco and mixture of betel nut. There is one mobile phone which is also seized. The value of the contraband is stated to be Rs.21,514/-. The applicant is running a pan shop. The offence, therefore, came to be registered under Sections 328, 272, 273 read with 34 of the Indian Penal Code.

2. My attention is invited to the order dated June 22, 2022, granting ad-interim protection to the applicants in Anticipatory Bail Application No.1588/2022 and Anticipatory Bail Application No.1587/2022. Paragraphs 4 and 5 read thus:-

“4. Barring the offence u/s.328 of the IPC, all other offences are bailable. The position of law whether an offence u/s.328 gets attracted when the prohibited substance, is transported or supplied, but it is caused to be consumed is attracted or not, till date, is not crystallized. A decision of the Division Bench of this Court in case of Anand Ramdhani Chaurasiya & Anr Vs. The State of Maharashtra [(2019) SCC Online Bombay 1857], where a view was taken that Section 328 IPC could not have been invoked, has been stayed by the Hon’ble Apex Court. However, in SLP No.843/2021 Mohd. Ali Rehman @ Mohammed Ali AbdulRaheman Shaikh Vs. State of Maharashtra, the Hon’ble Apex Court, on 13/11/2021 took note of the pending matter before it, in regards to invocation of Section 328 of the IPC. The Special Leave Petition is directed to be tagged with the Special Leave Petition filed by the State of Maharashtra in case of Anand Chaurasiya (supra). The Hon’ble Apex Court has directed the Investigating Officer not to arrest the petitioner subject to his rendering co-operation.

5. Considering the conundrum of the applicability of provisions of Section 328 in a situation like this, and since the issue is pending before the Hon’ble Apex Court, pursuant to the view of the Division Bench of this Court and since judgment of the Division Bench taking a view that it cannot be invoked, has been stayed, the ad-interim order would serve the purpose of justice for the time being.”

3. Learned APP to seek instructions from the Investigating Officer, who is present before the Court.

4. In this view of the matter, the applicant is protected by way of an interim order. Hence the following order.

ORDER

(a) In the event of arrest in connection with FIR No.07/2022 registered with Miraroad Police Station, applicant Gaurav Jayantbhai Hapani shall be released on bail on furnishing P.R. Bond of Rs.25,000/- with one or two sureties in the like amount.

(b) The applicant shall report to the Investigating Officer of the concerned police station on 14th and 15th December, 2022, between 10.00 a.m. and 12.00 noon and thereafter, as and when called for. The applicant to co-operate with the investigation.

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing the facts to Court or any Police Officer and shall not tamper with evidence.

5. Stand over to January 5, 2023.”

4. Learned APP submitted that the custodial interrogation of the applicant is necessary as he is a supplier of the Gutkha. It is further submitted that the applicant is involved in a similar offence. There are 4 criminal antecedents against the applicant of a similar nature. In those cases, the charge-sheet has been filed. It is submitted by the learned counsel for the applicant that in one C.R. the applicant is acquitted, in one C.R. he has been released on pre-arrest

bail by the Hon'ble Supreme Court and in another C.R. he has been released on bail. So far as the accusation in the present C.R. is concerned, it is on basis of the statement of the co-accused- Radheshyam Ramkumar Chaurasia that the present applicant is implicated. It is further stated by Radheshyam that in his mobile phone numbers of the co-accused Imran, Sandip, Gaurav (applicant) and Babu can be found.

5. It is on the basis of the statement of the co-accused the applicant is sought to be implicated. It is pertinent to note that nothing is recovered from the applicant. The applicant was not present at the time of the recovery of the Gutakha from the said shops. Learned counsel for the applicant, on instructions, submitted that he is willing to hand over his mobile phone and ready to co-operate with the investigation. Statement accepted.

6. In my opinion, having regard to the facts of the present case, the order dated 09/12/2022 granting interim protection to the applicant deserves to be confirmed. The applicant can be enlarged on pre-arrest bail. Hence the following order.

ORDER

(a) In the event of arrest in connection with First Information Report No. 07 of 2022 registered with Mira Road Police Station, the applicant Gaurav Jayantbhai Hapani shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(b) The applicant shall report to the Investigating Officer of the concerned police station 23.01.2023, 24.01.2023 and 25.01.2023, between 11.00 am to 02.00 pm and thereafter as and when called for. The applicant to cooperate with the investigation.

(c) The applicant shall hand over his mobile phone to the Investigating Officer.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

7. The application stands disposed of.

(M. S. KARNIK, J.)