

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO.116 OF 2023
Shitesh Shyamnarayan Jaiswal Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri Sumedh Kadam, Advocate h/f Shri R.R. Vyas, Advocate for applicant.

Shri S.S. Doifode, APP for non-applicant/State.

CORAM : ANIL L. PANSARE, J.

DATE : MARCH 06, 2023.

Heard.

2. On 20.02.2023, the following order was passed:

“Heard.

2. The Applicant is apprehending arrest at the hands of Police Station, Ramnagar, Wardha in Crime No. 106/2023 for the offences punishable under Section 120-B, 328 and 420 of Indian Penal Code and Sections 108, 65(a), 65(e), 68, 83 and 86 of Maharashtra Prohibition Act, 1949. The FIR has been lodged on 26/1/2023.

3. The accusation against the Applicant is that he stocked the liquor which was ment to be sold in Madhya Pradesh.

4. Issue notice to the Non-applicant, returnable on 6th March, 2023.

5. Mr. Rode, learned APP waives service of notice on behalf of the Non-applicant/State.

6. Interim relief in following terms :

(i) In the event of arrest in Crime No. 106/2023 for the offences punishable under Section 120-B, 328 and 420 of Indian Penal Code and Sections 108, 65(a), 65(e), 68, 83 and 86 of Maharashtra Prohibition Act, 1949, the Applicant – Shitesh Shyamnarayan Jaiswal be released on

bail on he executing PR Bond in the sum of Rs.25,000/- with one surety in the like amount.

(ii) The Applicant shall attend the Police Station, Ramnagar, Wardha on every Sunday between 2.00 p.m. to 5.00 p.m. till filing reply.

7. Stand over to 6th March, 2023.”

3. The reply has been filed by the non-applicant/State on the point of invoking Section 328 of the IPC. The only statement that has been made is that some bottles were found to be manufactured in the State of Madhya Pradesh and therefore the investigating agency has applied provisions of Section 328 of the IPC in the crime.

4. The accusation in this case is that the co-accused Raju at times used to mix some intoxicant substance in liquor and used to sell at higher rates.

5. Section 328 reads as under:

“328. Causing hurt by means of poison, etc., with intent to commit an offence. - Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for at term which may extend to ten years, and shall also be liable to fine.”

6. Learned APP could not point out from the FIR or any other material that the applicant herein has administered or caused to be taken by any person intoxicating substance

with intent to cause hurt. Learned APP submits that Section 328 is also attracted when a person facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt. Thus, the essential element is that the substance seized is capable of causing hurt and there is intention of causing hurt.

7. It is nobody's case that the applicant has facilitated the commission of offence. Infact the prosecution could not point out from the record that the substance that has been seized is capable of causing hurt. *Prima facie*, it appears that the case is of illegal sell of liquor. It is thus quite challenging for the prosecution to prove complexity of the applicant in the crime under Section 328 of the IPC. Nonetheless the investigation is in progress, the investigating officer will collect necessary evidence, if so collected, will then only file final report under Section 328 of the IPC against the applicant.

8. On enquiry of antecedence, the learned advocate for the applicant submits that there are no criminal antecedence against the applicant. The applicant is permanent resident of Wardha and is having strong roots in the locality.

9. If that be so, there is no reason why interim relief granted on 20.02.2023 should not be confirmed. Hence, interim order granted on 20.02.2023 is hereby confirmed on the following conditions.

10. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The learned trial Judge shall not get influenced with the above observations.

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in Crime No.106/2023 registered with Police Station, Ramnagar, Wardha for the offences punishable under Section 120-B, 328 and 420 of Indian Penal Code and Sections 108, 65(a), 65(e), 68, 83 and 86 of Maharashtra Prohibition Act, the Applicant – Shitesh Shyamnarayan Jaiswal be released on bail on he executing PR Bond in the sum of ₹25,000/- with one surety in the like amount.
- (iii) The applicant shall attend Police Station, Ramnagar, Wardha on every alternate Sunday between 2:00 pm and 5:00 pm, till filing of the charge-sheet.
- (iv) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and to the Court concerned and shall not change the same till the final disposal of the case.
- (v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

- (vi) The applicant shall not obstruct or hamper the police investigation and shall not play mischief with the evidence collected or yet to be collected by the Police.
- (vii) The applicant shall maintain law and order.
- (viii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of.

JUDGE

Wagh