

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.173 OF 2023

Avinash s/o Khemraj Shadiza

Vs.

State of Maharashtra, through Police Station Officer, Police Station, Arni, District
Yavatmal

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

Court's or Judge's orders

Mr. S. M. Khan, Counsel for applicant.

Mr. A. M. Kadukar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 10/07/2023

1. This is an application for grant of anticipatory bail in respect of Crime No.1105/2022 registered with Police Station Arni, District Yavatmal for the offence punishable under Sections 188, 272, 273 and 328 of the Indian Penal Code read with Section 26(2)(i), 27(3)(e), 30(2)(a) and 59 of the Food Safety and Standards Act, 2006.

2. As per the contention of the applicant, except the offence under Section 328 of the Indian Penal Code, all other offences are bailable. The accusation against the present applicant is that the contraband substance Sitar gutkha worth Rs.48,00,000/- is transported by the applicant. However, there is no other evidence to show involvement of the applicant in the said crime. There is no allegation that applicant has

either administer or caused to be administered the contraband under question to anyone with intention to cause hurt. While considering the interim prayer of the present applicant, this Court has observed that the Investigating Officer to file report as to why the final report has not yet been submitted. Now, the final report is submitted. It is further observed by this Court that the report should also indicate as to whether the custodial interrogation of the applicant is necessary and release the present applicant on bail.

3. Now charge-sheet is filed. The custody of the present applicant is not required. As far as the applicability of Section 328 of the Indian Penal Code is concerned, the same issue is pending before the Hon'ble Apex Court. As observed earlier that there is no allegation that the applicant has either administer or caused to be administered the contraband, therefore, the applicability of Section 328 of the Indian Penal Code is in question. Considering that, the custodial interrogation of the present applicant is not required. The interim protection was granted, which deserves to be confirmed. Hence, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The interim protection granted to the present applicant by granting ad-interim anticipatory bail, in the event of arrest in Crime

No.1105/2022 registered with Police Station Arni, District Yavatmal for the offences punishable under Sections 188, 272, 273 and 328 of the Indian Penal Code read with Section 26(2)(i), 27(3)(e), 30(2)(a) and 59 of the Food Safety and Standards Act, 2006, the applicant **Avinash s/o Khemraj Shadiza** be released on bail, on his furnishing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend Police Station as and when required for investigation purpose.

(iv) The applicant shall furnish his cellphone number and residential address with address proof and shall cooperate with the investigating agency.

(URMILA JOSHI-PHALKE, J.)

Sarkate