

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

CRIMINAL APPLICATION (ABA) NO.195 OF 2023
Mohd. Shafi Mohd. Husain 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 M.M. Khan, Advocate for applicant.
Shri S.S. Doifode, APP for non-applicant/State.

CORAM : ANIL L. PANSARE, J.
DATE : APRIL 11, 2023.

On 28.03.2023, the following order was passed:

“Heard.

2. The applicant is apprehending arrest in Crime No.91/2023 registered with the Police Station, Darwha, District Yavatmal for the offences punishable under Sections 188, 272, 273, 328 of Indian Penal Code, 1860 and Sections 26(2)(i), 27(3)(e), 30(2)(a) and 59 of the Food Safety and Standards Act, 2006.

3. The accusation against the applicant is that he was found in possession of contraband namely, Sagar Pan Masala, Zed Black Scented Tobacco, Babbu Gold Scented Tobacco and S.R. worth Rs.2,39,795/-. The learned counsel for the applicant submits that all the offences are bailable except the offence under Section 328 of the IPC.

4. Section 328 of the IPC reads thus:

“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.”

5. *Considering the accusation made against the applicant, prima facie, it appears that the allegations as regards administration of the poisonous substance or to cause someone to take poisonous substance with an intent to cause hurt or to facilitate the commission of an offence are not made out. It is so because the victim, if any, is unknown. Merely because the applicant was found in possession of contraband, one cannot attribute him the guilt that he procured or stored the contraband for the purpose of administration to the unknown persons or knowing that it will be administered to the unknown persons with intent to cause them hurt. The prosecution will have to answer as to how guilt could be attributed to the Applicant against an unknown person.*

6. *Issue notice to the non applicant, returnable on 11.04.2023.*

7. *Learned APP waives service of notice on behalf of the non applicant-State.*

8. *In the meantime, interim relief in the following terms:*

(i) *In the event of arrest in Crime No.91/2023 registered with the Police Station, Darwha, District Yavatmal for the offences punishable under Sections 188, 272, 273, 328 of Indian Penal Code, 1860 and Sections 26(2)(i), 27(3)(e), 30(2)(a) and 59 of the Food Safety and Standards Act, 2006, applicant – Mohd. Shafi Mohd. Husain, be released on bail on he furnishing PR Bond in the sum of Rs.25,000/- with one surety in the like amount.*

(ii) *The applicant shall attend Police Station, Darwha, District Yavatmal on 31/3/2023 and 6/4/2023 between 2.00 p.m. to 5.00 p.m. and shall co-operate in the investigation.*

(iii) *The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.”*

2. Briefly stated the case of the prosecution is that the

informant has lodged report that on 01.02.2023, he received phone call from PSI Shashikant Dodke of Police Station, Darwha. He has seized contraband articles from the home of the applicant resident of Manpura, Darwha by preparing the Panchanam and thereby seized (1) 434 packets of Sagar Pan Masala price of ₹97.50 each packet in seven gunny bags of total worth ₹42,315/-, (2) 100 packets of Z-Black made scented tobacco having price of ₹200/- each packet in seven gunny bags of worth ₹20,000/-, (3) 480 packets of Baba Gold scented tobacco having price of ₹300/- each packet in 20 gunny bags of worth ₹1,44,000/-, (4) 558 packets of SR-1, Tobacco each having price of ₹60/- in nine gunny bags of total worth of ₹33,480/- i.e. total of ₹2,37,795/-. The PSI drew the samples of the said products/articles for Chemical Analysis from seized articles. Thereafter, the PSI has informed to the complainant Food Inspector and by complying all the procedure, the complainant had lodged the report.

3. Learned APP submits that the applicant was found in possession with the aforesaid contraband, which are banned articles as per Government Resolution dated 15.07.2022, and that said articles are banned in the State of Maharashtra. He further submits that the articles are dangerous to the health of the lives of public at large. He then submits that the custodial interrogation of the applicant is necessary.

4. Thus, the crux of the prosecution is upon banned articles. Articles/contrabands are banned only in the State of Maharashtra. It is nobody's case that these articles/contrabands are banned throughout the India. In other words, possession of aforesaid articles/contrabands outside Maharashtra is not an offence under Section 328 of the IPC.

5. In the case of *Anand Ramdhani Chaurasia and another Vs. State of Maharashtra and others [2019 ALL MR (Cri) 4402]* after considering various judgments, the Division Bench of this Court has held that the storage of the prohibited substance could not be brought within the purview of an attempt to commit an offence under Section 328 and it does not attract Section 328 of the IPC.

6. *Prima facie*, the ingredients under Section 328 appear to be lacking. The other offences areailable. On enquiry of antecedents, learned advocate for the applicant submits that there are no criminal antecedents against the applicant. He is residing in the self-owned house. He has strong roots in the locality.

7. In view of above, there is no reason why interim relief granted on 28.03.2023 should not be confirmed but in the following terms:

ORDER

- i. The application is allowed.
- ii. In the event of arrest in Crime No.91/2023 registered with the Police Station, Darwha, District Yavatmal for the offences punishable under Sections 188, 272, 273, 328 of Indian Penal Code, 1860 and Sections 26(2)(i), 27(3)(e), 30(2)(a) and 59 of the Food Safety and Standards Act, 2006, the applicant – Mohd. Shafi Mohd. Husain 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 the Police Station as and when directed by the investigating officer, till filing of the charge-sheet and shall cooperate in the investigation.
- 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.

(Anil L. Pansare, J.)

Wagh