

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

CRIMINAL APPLICATION (ABA) NO. 236/2023

KISAN @ BALU RAMESH SHINDE AND ANOTHER
VS
STATE OF MAH. THR. PSO PS UMARKHED TQ. UMARKHED, DIST. YAVATMAL.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr M.N. Ali, counsel for the applicants.

Mr A.M.Kadukar, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 26/06/2023.

1. Heard.
2. The applicants are apprehending arrest in respect of Crime No. 132/2023 registered with Police Station, Umarkhed District - Yavatmal for the offences punishable under Sections 188, 272, 273, 328 read with Section 34 of the Indian Penal Code and Sections 26(2) (i), 27(3)(e), 30(2)(a) and 59 of the Food Safety and Standards Act.
3. The applicants are apprehending arrest at the hands of Police as the crime is registered on the basis of report lodged by one Gopal Vinayak Mahore on an allegation that he is serving as Food and Safety Inspector at Yavatmal. He received the information that the present applicant is in possession of scented

tobacco, therefore, the raid was conducted and tobacco worth of Rs. 1,76,000/- is found along with him. On the basis of said report, police have registered the Crime.

4. Mr M.N. Ali, learned counsel for the applicant submitted that except the offence under Section 328 of the Indian Penal Code, all other offenses are bailable. The accusations against the present applicant is that he possessed contraband articles namely flavored tobacco and Pan Masala worth of Rs. 1,76,000/-.

5. The issue regarding applicability of Section 328 was before this Court and before the Aurangabad Bench wherein the applicants are released on bail in the event of their arrest, considering that offence under Section 328 is not made out. The bail applications at the Principal Seat were rejected which was the subject matter of the petition before the Hon'ble Apex Court, wherein the Hon'ble Apex Court has stayed the order passed by the Principal Seat of this Court. This Court i.e. Nagpur Bench and Aurangabad Bench considered the applications and released the applicants on bail, in similar types of allegations.

6. Considering the accusations made against the applicant, prima-facie it appears that the allegations as regards administration of prohibited substance is not made against the present applicant. The only allegations

is that he was found in possession of the said contraband. There is no attempt or he has not administered the same to anybody. So, one cannot attribute him the guilt only because he stored the contraband, it cannot be presumed that he procured or stored the said contraband for the purpose of administration to unknown person or knowing that it will be administered to the unknown persons with intend to cause them to heart.

7. In view of the order of the Hon'ble Apex Court and the order by this Court as well as at Aurangabad Bench, the similar view is to be taken as there is no reason to take the different view. The application of the present applicant deserves to be allowed as no prima-facie case is made out against the present applicant under Section 328 of the Indian Penal Code. In view of that, I proceed to pass following order:

- a) Criminal Application is allowed.
- b) The applicants are released on anticipatory bail in the event of his arrest in respect of Crime No. 132/2023 registered with Police Station, Umarkhed District Yavatmal for the offences punishable under Sections 188, 272, 273, 328 read with Section 34 of the Indian Penal Code and Sections 26(2)(i), 27(3)(e), 30(2)(a) and

59 of the Food Safety and Standards Act, on executing P.R. Bond of Rs. 25,000 with one solvent surety of like amount.

- c) The applicants shall attend the concerned Police Station as and when required for the investigation purpose
- d) The applicants shall furnish their cell phone numbers address along with the address proof
- e) The applicants 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.
- f) Criminal Application is disposed of.

JUDGE