

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

CRIMINAL APPLICATION (ABA) NO.283 OF 2023

Ajay Upendra Dey

Vs.

The State of Maharashtra, through Police Station Officer, Dhanora, District Gadchiroli

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

Court's or Judge's orders

Mr. M. A. Deo, Advocate for applicant.
Mr. A. M. Kadukar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19/07/2023

1. The present application is for seeking anticipatory bail in connection with Crime No.32/2023 registered with Dhanora Police Station for the offences punishable under Sections 188, 273 and 328 of the Indian Penal Code and Sections 26(2)(i), 26(2)(iv), 30(2)(a) and 3(1)(zz)(iv) and 59 of the Food Safety and Standards Act.

2. The applicant is apprehending arrest at the hands of police as crime is registered on the basis of report lodged by Suresh Posanna Torem on an allegation that the applicant is found in possession of scented tobacco to the tune of Rs.1,96,000/-. The learned Counsel Mr. Deo, for the applicant submitted that the contraband article which was found in possession with the applicant was not used for administering to any

person. There is no such allegation that the scented tobacco has been administered by the applicant to any person or has caused to be administered with intent to cause hurt to any person and therefore, the ingredients of Section 328 of the Indian Penal Code are not attracted. This Court has already protected the present applicant by granting ad-interim protection. During pendency of the application, the applicant has attended the Police Station and cooperated with the investigating agency. The physical custody of the present applicant is not required and hence, the ad-interim protection granted to the present applicant be confirmed in his favour.

3. The said application is strongly opposed by the State on the ground that the physical custody of the present applicant is required, though the contraband articles are recovered for the interrogation purpose and hence, application deserves to be rejected.

4. While granting ad-interim protection, this Court has already observed that considering the accusation made against the applicant, *prima facie*, it appears that the allegation 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 further observed by this Court that it is so because the victim, if any, is unknown. Merely because the

applicant was found in possession of contraband, one cannot attribute him 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. Moreover the issue regarding the applicability of the Section 328 of the Indian Penal Code is pending before the Hon'ble Apex Court in one Special Leave Petition. Considering the issue is still pending before the Hon'ble Apex Court and the physical custody of the present applicant is not required as the applicant has cooperated with the investigating agency to carry out the investigation. The ad-interim protection granted to the present applicant deserves to be confirmed. In view of that, I proceed to pass following order.

(i) The application is allowed.

(ii) In the event of arrest in Crime No.32/2023 registered with Dhanora Police Station for the offences punishable under Sections 188, 273 and 328 of the Indian Penal Code and Sections 26(2)(i), 26(2)(iv), 30(2)(a) and 3(1)(zz)(iv) and 59 of the Food Safety and Standards Act, 2006, the applicant **Ajay Upendra Dey** be released on bail on furnishing PR 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 the investigation purpose.

(4)

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(iv) The applicant shall not induce, threat or promise any witnesses who are connected with the alleged crime.

(v) The applicant shall furnish his cell phone number and address with the address proof.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate