

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

CRIMINAL APPLICATION (BA) NO.561 OF 2023

Asif Ahemad Popate

Vs.

State of Maharashtra, Through its Police Station Officer, Police Station, Manora,
District Washim

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

Court's or Judge's orders

Mr. Mir Nagman Ali, Counsel with Mr. B. K. Suchak, Counsel for the applicant.
Mr. S. M. Ghodeswar, APP for the respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 06/07/2023

1. Present application is for bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.331/2023, registered with Police Station Manora, District Washim for the offence punishable under Sections 188, 273 and 328 read with Section 34 of the Indian Penal Code and Section 59 of the Food Safety and Standards Act, 2006.

2. The accusation against the present applicant is that the crime is registered on the basis of a report lodged by Mr. Vinayak Dhananjay Devdhar on an allegation that he received the secret information from the Sub-Divisional Police Officer at about 10.30 a.m. to 11.00 a.m., the Sub-Divisional Police Officer has called the complainant and other police staff in his cabin and informed that in Manora city the applicant is doing

business of storing and selling the scented tobacco which is declared as contraband by the State of Maharashtra. Accordingly, the place was visited and the stock worth of Rs.1,19,680/- was seized and the applicant is arrested. The applicant is in jail since 07.06.2023.

3. As per the contention of the applicant, there is no allegation against him that he has administered or attempted to administer the said stupefying substance to anybody. Merely because he has stocked, is not sufficient to attract the provision of Section 328 of the Indian Penal Code. Now, the investigation is completed, his further custody is not required and hence, he be released on bail.

4. The said application is strongly opposed by the State on the ground that the huge stock worth of Rs.1,19,680/- is seized from the shop of the present applicant. If he is released on bail, there is every possibility that he will involve in a similar type of offence and prays for rejection of the application.

5. Heard learned Counsel Mr. Mir Nagman Ali for the applicant and learned APP for the State. As far as the application under Section 328 of the Indian Penal Code is concerned, the issue is pending before the Hon'ble Apex Court. This Court as well as at Aurangabad Bench, the bail applications of the applicants are considered, but Principal Seat at Bombay has not

considered the bail application and the said order is under challenge before the Hon'ble Apex Court. Thus, the issue regarding the applicability of the provision of Section 328 of the Indian Penal Code, is pending before the Hon'ble Apex Court. As far as the ingredients of Section 328 of the Indian Penal Code is concerned and considering the allegation against the present applicant, there is an issue whether the provisions of Section 328 of the Indian Penal Code are applicable?

6. Now, the stock is already recovered, no purpose will be served by keeping the present applicant behind bar, as nothing is seized from him. In view of that, application deserves to be allowed. Accordingly, I proceed to pass the following order.

(i) The application is allowed.

(ii) The applicant Asif Ahemad Popate is hereby released on bail in connection with Crime No.331/2023, registered with Police Station Manora, District Washim for the offence punishable under Sections 188, 273 and 328 read with Section 34 of the Indian Penal Code and Section 59 of the Food Safety and Standards Act, 2006, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

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

(4)

63.ba.561.2023

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

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate