



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

CRIMINAL APPLICATION (ABA) NO. 586/2023

Mohammad Hussain Mohd. Harun V/s State of Maharashtra

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

Court's or Judge's Order

Mr. A.M.Jaltare, Counsel for the applicant.

Mrs. S.M.Ghodeswar, APP for the State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 30/11/2023.

1. By this application, the present applicant is seeking anticipatory bail in event of his arrest in connection with Crime No.647/2023 registered with Police Station, Pulgaon, District Wardha for the offences punishable under Sections 188, 272, 273 and 328 of the Indian Penal Code along with Sections 26(1), 26(2) (iv), 27(3)(e), 30(2)(a), 3(1)(zz)(iv) and 59 of the Food Safety and Standard Act, 2006.

2. The accusations against the present applicant is that the crime is registered against him, on the basis of report lodged by the Prashant Shivraj Lohar, Food and Safety Officer, Wardha, on an allegation that he received a communication from the Local Crime Branch dated 04/08/2023, informing that the co-accused Prem Ahuja is dealing with the contraband articles like scented nuts, scented tobacco which is prohibited in the

State of Maharashtra. Accordingly, he conducted the raid and contraband articles worth of Rs. 15,01,894/- along with vehicles was seized. During the interrogation with co-accused, the name of the present applicant is revealed. The applicant is apprehending arrest at the hands of Police.

3. As per the contention of the present applicant, except the statement of the co-accused, no other material is with investigating officer to connect with the present applicant with the alleged offence. Nothing is recovered from him or from his house. As far as the custodial interrogation is concerned which is not required, as the entire stock from the Prem Ahuja who is the co-accused, is seized by the Police. As far as the interrogation part is concerned, he is ready to abide all the conditions imposed by this Court.

4. The said application is strongly opposed by the State on the ground that during investigation, the CDR reports are collected by the Investigating Officer which discloses that there was constant communication between the present applicant and the co-accused namely Mohammad Bilal Mohammad Yakub. There are antecedents against the present applicant as one Crime No. 660/2023 is registered against the present

applicant. In view of that, criminal application deserves to be rejected.

5. Learned counsel for the applicant submitted that except the statement of the co-accused, admittedly no material is collected during the investigation. The statement of the witnesses shows that present applicant was selling the contraband articles through his firm Ashrafi Sales, however, investigating officer has not collected any document to that effect. As far as the CDR is concerned, accused Mohammad Bilal is relative of the present applicant which can be ascertained from the statement of the Mohammad Bilal and they are from the same village, therefore, communication between them is not sufficient to connect them together with the alleged offence.

6. He submitted that, the statement of the co-accused is not admissible against the present applicant to connect him with the alleged offence. Moreover, the issue regarding the applicability of Section 328 of the Indian Penal Code is pending before the Hon'ble Apex Court, as nothing is to be recovered from the present applicant, present applicant be protected by granting anticipatory bail.

7. Learned APP strongly opposed the bail application on the ground that there is sufficient material to connect the present applicant with alleged offence and placed reliance on the CDR Report.

8. Having heard both the sides and on perusal of the investigation papers, admittedly except the statement of the co-accused and the CDR Report, no other material is not record to show that present applicant is dealing with the contraband articles. As per the statement of the co-accused, present applicant was running the shop of namely Ashrafi Sales. The Investigating Officer has not collected any document to show that the said shop Ashrafi Sales is run by the present applicant and dealing with the contraband articles.

9. The statement of other co-accused Mohammad Bilal Mohammad Yakub shows that the present applicant is his cousin brother and they were obtained the contraband articles from the other State. Thus, except the statement of the co-accused, no other material is placed on record to connect the present applicant with the alleged offence. Merely because, there is one crime is registered against the present applicant, his liberty cannot be curtailed. The issue regarding applicability of Section 328 of the Indian

Penal Code is pending before the Hon'ble Apex Court. Considering that nothing is recovered from the present applicant, the investigating Officer has not carried out the investigation to ascertain the facts, whether the applicant is running the firm by name Ashrafi Sales and dealing with the business of Contraband Articles. At this stage, except the statement of the co-accused, no material to connect the present applicant and therefore, present application deserves to be allowed. Accordingly, I proceed go pass following order.

- A] The Criminal application is allowed.
- B] In the event of his arrest, the applicant - Mohammad Hussain Mohd. Harun in connection with Crime No.647/2023 registered with Police Station, Pulgaon, District Wardha for the offences punishable under Sections 188, 272, 273 and 328 of the Indian Penal Code along with Sections 26(1), 26(2) (iv), 27(3)(e), 30(2)(a), 3(1)(zz)(iv) and 59 of the Food Safety and Standard Act, 2006, is hereby released on anticipatory bail on executing P.R. bond of Rs. 25,000/- with one solvent surety in the like amount.
- C] The applicant shall attend the concerned Police Station once in a week on Sunday

between 10.00 a.m to 01.00 p.m. till filing of the charge-sheet and shall cooperate with the investigating agency.

- D] The applicant shall not directly or indirectly made any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- E] The applicant shall furnish his cell phone number and address with address proof.

Criminal application is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J]