



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

CRIMINAL APPLICATION (ABA) NO. 659/2023

Sushil Shridhar Yanchalwar 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. R.M.Daga, counsel for the applicant.

APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 25/10/2023.

1. The present application is for grant of anticipatory bail in the event of his arrest in connection with Crime No. 439/2023 registered with Police Station Umarkhed, District Yavatmal for the offences punishable under Sections 188, 272, 273 and 328 read with Section 34 of the Indian Penal Code, 1860 and Sections 26(2)(i), 27(3)(e), 30(2)(a) and 59 of the Food Safety and Standards Act.

2. The applicant is apprehending arrest at the hands of the Police as Crime is registered on 13/07/2023 on the basis of the report lodged by Amitkumar Shokumar, on an allegation that he is serving as a Food Safety Officer on 13/07/2023. When he was present in his office, he received the information from the Local Crime Branch, Yavatmal, that some persons are transporting the scented ghutkha, scented tobacco and pan masala in a huge quantity, and the vehicle was restrained by the Police bearing no. MH-40-BF-4987. On the trap of the said vehicle, the property worth Rs. 31,27,920/- was found. On the basis of the report, the

crime was registered against the Bhikamram Thanuram Sahu and Vivekkumar Bhagirathi Sahu. During the investigation, it reveals that the present applicant, who runs the Vira Transport is also involved in the said crime and therefore, crime is registered against him also.

3. It is contended by the applicant that only his role to the extent of giving the vehicle on rent, regarding the rest of the event, he is not at all concerned with the alleged offence. His physical custody is not required as the contraband articles have already been recovered. He is ready to cooperate with the investigating agency. Though interim protection was granted to him, he has not misused the same liberty, and therefore, interim protection be confirmed.

4. The said application is strongly opposed by the State on the ground that there is prima-facie material to show that he is involved in the said offence. The allegation against the present applicant is that he is the transporter and deals with the contraband articles which are seized, his physical custody is required for investigation purpose. Hence, criminal application deserves to be rejected.

5. Having heard Mr. R.M.Daga, learned counsel for the applicant and learned APP for the State.

6. Perused the recitals of the FIR, from which it reveals that the investigating agency has applied Section 328 of the Indian Penal Code. Admittedly, the contraband articles are

not recovered from the physical possession of the present applicant. From the recitals of the FIR, it shows that the vehicle, in which, the contraband articles are transported is owned by the Vira Transport, which is owned by the present applicant. As far as the applicability of Section 328 of the Indian Penal Code is concerned, it is the only non-bailable section applied by the investigating agency. The issue regarding the applicability of Section 328 is pending before the Hon'ble Apex Court.

7. Furthermore, the immediate custody of the applicant is concerned which is not required as contraband articles are already seized. In view of that, the immediate custodial interrogation is not required. The applicant can be protected granting anticipatory bail, in the event of his arrest by confirming the ad-interim protection. Accordingly, I proceed to pass following order.

- i. Criminal application is allowed.
- ii. In the event of arrest in Crime No. 439/2023 registered with Police Station Umarkhed, District Yavatmal for the offences punishable under Sections 188, 272, 273 and 328 read with Section 34 of the Indian Penal Code, 1860 and Sections 26(2)(i), 27(3)(e), 30(2)(a) and 59 of the Food Safety and Standards Act, applicant– Sushil Shridhar Yanchalwar, be released on bail on he furnishing PR. Bond in

the sum of ₹25,000/- with one surety in the like amount.

- iii. The applicant shall attend concerned Police Station, as and when required for the investigation purpose and shall cooperate in the investigation.
- iv. The applicant shall furnish his cell phone number and address with address proof.
- v. The applicant shall not induce threat or promise to any witnesses, who are connected with the alleged crime.

[URMILA JOSHI-PHALKE, J]