

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

CRIMINAL APPLICATION (ABA) NO.860/2022

Mukeshkumar Rameshlal Motwani .vs. State of Maharashtra through its PSO
P.s. Samudrapur, Hinganghat, Dist. Wardha.

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

Court's or Judge's orders

Mr. S. B. Trivedi, Advocate for applicant.
Mr. N. R. Rode, A.P.P. for non applicant-State.

CORAM : **ANIL L. PANSARE, J.**

DATE : **JANUARY 4, 2023.**

Heard learned counsel for the parties.

2. Accusation against the applicant is that the applicant has supplied scented tobacco to the main accused Mayur Gawande. The Food Safety Officer has seized scented tobacco from Mayur Gawande and upon interrogation, Mayur Gawande has disclosed that he received scented tobacco from the present applicant. It is informed by the learned counsel for the applicant that Mayur Gawande has been now released on bail. According to him, nothing is to be recovered from the applicant. He also challenges invocation of Section 328 of the Indian Penal Code against the applicant. Section 328 of the IPC reads thus:

“328. Causing hurt by means of poison, etc., with intent to commit an offence.—Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely

that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

3. Though, the learned Additional Public Prosecutor has opposed the application, prima facie, it appears difficult as to how it could be said that the applicant has caused to administer the scented tobacco to the prime accused or any other person with intend to cause hurt to the said person(s). The so called poisonous substance in the form of scented tobacco has not been recovered from the applicant and that nothing is to be recovered at his instance.

4. Learned counsel for the applicant submits that there are no criminal antecedents at the credit of the applicant. He is running a grocery shop in the name and style as, “Jay Bhole Traders”, for years together. Therefore, he has deep roots in the locality. The applicant, therefore, has made out a case for releasing him on bail. Hence, following order is passed.

ORDER

(i) The application is allowed.

(ii) In the event of arrest in connection with Crime No.673/2022, registered with Police Station Samudrapur, District Wardha, for an offence punishable under Sections 328, 272, 273 of the Indian Penal Code, Sections 26(1), 26(2) (iv), 27(3)(e), 30(2)(a), 3(1)(zz)(iv) and 59 of the Food Safety and Standards Act, 2006, applicant – Mukeshkumar Rameshlal Motwani, be released on bail on he executing PR.

bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend Police Station Samudrapur, District Wardha once in a fortnight i.e. on every alternate Monday, between 02:00 to 04:00 p.m.

(iv) The applicant shall furnish his address and telephone/mobile number(s) to the investigating officer. The applicant shall not change the same without permission of the Court.

(v) The applicant shall not tamper with the prosecution evidence.

The application is disposed of.

(Anil L. Pansare, J.)

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