

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPLICATION (BA) NO.1463 OF 2022**

Ahefaz Iqbal Memon alias Menon Vs. State of Maharashtra, through its PSO, PS,  
Babhulgaon, Tq. Babhulgaon, Dist. Yavatmal.

---

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

Court's or Judge's orders.

---

Shri F.T. Mirza, Advocate for applicant.  
Shri A.M. Kadukar, APP for non-applicant/State.

**CORAM : ANIL L. PANSARE, J.**  
**DATE : JANUARY 16, 2023.**

This is an application under Section 439 of the Code  
Criminal Procedure, 1973.

2. Heard Shri F.T. Mirza, learned advocate for the applicant and Shri A.M. Kadukar, learned Additional Public Prosecutor for non-applicant/State. Perused the record and proceedings.

3. The applicant has been arrested on 25.11.2022 in Crime No.0794/2022 registered with Police Station, Babhulgaon, District Yavatmal for the offences punishable under Sections 188, 272, 273, 328 of the Indian Penal Code (for short "IPC") and under Sections 26(2)(i), 27(3)(e), 30(2) (a) of the Food Safety and Standard Act, 2006.

4. Admittedly, except offence punishable under Section 328 of the IPC the other offences are bailable. The Local

Crime Branch, Yavatmal received secret information that resulted into laying raid at the shop and godown belonging to the applicant. The applicant was found in possession of contraband viz. guthka, scented supari and tobacco. The value of contraband was assessed to ₹27 lakhs approximately. The applicant was present at the counter of the shop. The First Information Report came to be lodged by the Food Safety Officer against the applicant. Later on, the involvement of two more persons namely; Ajay Vishandas Kamnani and Vicky alias Vikram Sachachanand Manglani, supplier of the contraband, was found.

5. Shri F.T. Mirza, learned advocate for the applicant submits that Ajay Vishandas Kamnani has been released on anticipatory bail and Vicky alias Vikram Sachachanand Manglani has been released on regular bail.

6. Though Shri A.M. Kadukar, learned Additional Public Prosecutor for non-applicant opposed the application on the ground that crime under Section 328 is serious offence, however, contents of the FIR and case diary does not really indicate as to whom the contraband were either administered or to whom it were to be administered at the hands of the applicant. The offence under Section 328 will be attracted in following conditions:

(a) if any poison, stupefying, intoxicating, unwholesome

drug or other thing is administered to a person with intent to cause hurt to such person; or

(b) it is caused to be taken by a person with intent to cause hurt to such person; or

(c) it is administered or caused to be taken with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt.

In the present case, it is not known as to whom the contraband was to be administered. The allegation in respect of administration of contraband has to be qua a person, a real person and not imaginary. In the present case, since the applicant is said to have possessed or stored huge quantity of contraband substance, if the allegation of administration is to be understood to be for the public at large, the intention to cause hurt by such administration of substance cannot be inferred. It is so because the prosecution will have to prove that motive behind keeping those contraband is to cause hurt to a specific person/s and not to unknown persons. There cannot be motive to hurt unknown persons.

7. In the case of *Anand Ramdhani Chaurasia and another Vs. State of Maharashtra and others [2019 ALL MR (Cri) 4402]* after considering various judgments, the Division Bench of this Court has held that the storage of the prohibited

substance could not be brought within the purview of an attempt to commit an offence under Section 328 and it does not attract Section 328 of the IPC.

8. *Prima facie*, the ingredients under Section 328 appear to be lacking. The other offences are bailable. On enquiry of antecedents, learned advocate for the applicant submits that earlier similar offence was registered, where he has been granted bail. He is residing in the self-owned house. He has strong roots in the locality. The applicant has, therefore, made out a case to enlarge him on bail. Hence, I pass the following order:

### **ORDER**

- (i) The application is allowed.
- (ii) Applicant-Ahefaz Iqbal Memon alias Menon be released on bail, in connection with Crime No.0794/2022 registered with Police Station, Babhulgaon, District Yavatmal for the offences punishable under Sections 188, 272, 273, 328 of the Indian Penal Code and under Sections 26(2)(i), 27(3)(e), 30(2)(a) of the Food Safety and Standard Act, 2006, on he furnishing P.R. Bond in the sum of ₹50,000/- with one solvent surety in the like amount.
- (iii) The Applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court

concerned and shall not change the residence till the final disposal of the case.

(iv) The applicant shall attend Police Station on every Sunday between 02.00 pm and 05.00 pm, till filing of the charge-sheet and shall cooperate the investigating officer. Further, after commencement of the trial, the applicant shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(v) The Applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(vi) The Applicant shall maintain law and order.

(vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

**JUDGE**

*Wagh*