

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

CRIMINAL APPLICATION (ABA) NO. 916 OF 2022

SHAIKH NISAR SHAIKH KADAR

VS

STATE OF MAH. THR. PSO, PS BULDANA (CITY), DIST. BULDHANA.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. M. N. Ali, Advocate for applicant.
Mr. A. M. Kadukar, APP for respondent State.

CORAM : ANIL L. PANSARE J.

DATE : 12/01/2023

The applicant is apprehending arrest in connection with Crime No.919 of 2022, registered with Buldhana Police Station for the offences punishable under Sections 188, 273 and 328 of Indian Penal Code (IPC) read with Section 26(2)(iv) and 59(i) of Food Safety and Standard Act, 2006.

2. The case of the prosecution is that when one Dipak Govind Lekurwale was on patrolling duty, he received secret information that one TATA 407 vehicle bearing registration No.MH-28-AB-5699 is carrying contrabands Gutkha and is proceeding to Buldhana from Malkapur. The vehicle was intercepted. In search, the contrabands, namely,

Rajniwas scented Pan Masala worth Rs.4 Lakh approximately, Jafrani Jarda Premium worth Rs.1 Lakh approximately etc. were found. The articles along with vehicle were seized. The driver of the vehicle Shaikh Salim Shaik Ismail was arrested. It is said that during his interrogation, he disclosed role of the applicant. According to the co-accused, the contrabands were supplied by the applicant.

3. The learned Sessions Court has rejected bail application on the ground that the source of procuring Gutkha is attributable to the applicant. However, the First Information Report (FIR) indicates that the contrabands were purchased from Burhanpur, Madhya Pradesh and were to be supplied to the applicant. The bail application has also been rejected on the ground that the applicant has criminal antecedents.

4. The prime question however, remained is whether the ingredients of Section 328 of the IPC would be attracted in the present facts and circumstances of the case. He admitted that the contrabands were to be supplied to the applicant, however, except for the statement of co-accused, the Investigating Agency could not collect any evidence till date to show that the contrabands were to be

supplied to the applicant. In the circumstances, in my considered view the question of applicant administering poisonous contraband to any person does not arise. Further, in absence of the actual supply and any other evidence, it cannot be said that the applicant caused any person to take the said poisonous substance. In fact, learned APP could not point out as to whom this poisonous substance was to be administered. In absence of these vital elements *prima facie*, I am of the view that the ingredients of Section 328 will not be attracted.

5. What remains then is the provisions which areailable. In the circumstances, when the ingredients of Section 328 of the IPC are found to be not attracted, though *prima facie* it is opposed by the learned APP on the ground that applicant has criminal antecedents, cannot be considered. The prosecution will have to first point out some evidence showing complexity of the persons like applicant in such cases. In absence thereof only on the basis of criminal antecedents, the relief cannot be declined. The applicant therefore, has made out a case for grant of bail. Hence, the following order :-

ORDER

(i) The application is allowed.

(ii) In the event of arrest in Crime No.919/2022 registered with Police Station Buldhana(City), District Buldhana for an offence punishable under Sections 188, 273 and 328 of Indian Penal Code (IPC) read with Section 26(2)(iv) and 59(i) of Food Safety and Standard Act, 2006, applicant, namely, **Shaikh Nisar Shaikh Kadar**, be released on bail on he furnishing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend Police Station, Buldhana(City), District-Buldhana on every alternate Monday between 03:00 p.m. to 05:00 p.m., till filing of the charge-sheet.

(iv) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and to the Court concerned and shall not change the residence till the final disposal of the case.

(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 not obstruct or hamper the police investigation and shall not play mischief with the evidence collected or yet to be collected by the Police.

(vii) The applicant shall maintain law and order.

(viii) The applicant shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offence. The applicant shall not seek adjournments, except under extreme circumstances, to the satisfaction of the trial court.

(ix) 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.

JUDGE