



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 BAIL APPLICATION NO. 45 OF 2024

Dipak Maharajsing Yadav
VERSUS
The State of Maharashtra

...
Advocate for Applicant : Mr. Patil Jitendra Vijay
APP for Respondents: Mr. Mukesh K. Goyanka

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 1st FEBRUARY, 2024.

PER COURT :-

1. This is an application for grant of bail under Section 439 of the Code of Criminal Procedure, 1973. The applicant is arrested in Crime No. 424 of 2023 registered with City police station, Jalgaon, district Jalgaon, for the offences punishable under Section 188, 272, 273 and 328 of the Indian Penal Code (for short I.P.C.). His criminal bail application No. 1070 of 2023 with similar prayer came to be rejected by the learned Additional Sessions Judge, Jalgaon, vide order dated 30.12.2023.

2. The report is lodged by the police officer, City police station, Jalgaon, District Jalgaon. It is averred in the report that the confidential information was received by one of the police officials that Kesharyukta Nakhrali Gold Sweet Supari articles are illegally carried and put in Jalgaon Friend Transport. Accordingly, the informant and others went there to effect the raid. They seized 15

white colour bags. In each bag, there were 5 small bags of white colour, in which there were 50 packets of Kesharyukta Nakhrali Gold Sweet Supari. The total packets were 3750 amounting to Rs.2,25,000/-. A sample was collected and sent to the Chemical analyzer and seizure panchanama was also drawn. The report was immediately lodged on 19.12.2023. The applicant was arrested on 19.12.2023.

3. Learned advocate for the applicant submitted that though Section 328 of I.P.C. is invoked against the applicant, prima facie, the prosecution cannot establish essential ingredients of the said provision. It is pointed out that there must be intention to commit or facility to commit offence knowing that the offence is likely to cause hurt. Thus, the applicant has only stored the alleged Kesharyukta Nakhrali Gold Sweet Supari. Mere storing is not an offence. He submitted that the applicant has no such criminal antecedents. The applicant is falsely implicated in the crime. He has roots in the society. Learned advocate for the applicant lastly prayed to allow the application.

Learned advocate for the applicant is relying upon the authority of this Court (Nagpur Bench) decided on 16.1.2023 in criminal bail application No. 1463 of 2022 in the case of **Ahefaz Iqbal Memon vs. State of Maharashtra**. Para 7 of the said authority, reads as under:-

*“7. In the case of **Anand Ramdhani Caurasia 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.”*

4. Leaned A.P.P. for the State strongly opposed the application and pointed out that other sections of I.P.C. are also invoked against the applicant. The applicant is involved in serious and anti social crime. Investigation is not yet over. Considering serious nature of the crime. It is lastly prayed to reject the application.

5. No doubt, the applicant was found in possession of the articles. C.A. report is awaited. The applicant has no criminal antecedents. The applicant is running Jalgaon Friend Transport since 2017. The practical investigation is over and the custody of the applicant is not required for further investigation. His presence can be secured for trial. Considering all these aspects, the application deserves to be allowed on certain conditions. Hence, the following order:-

O R D E R

I. The application is allowed.

II. The applicant in connection with Crime No. 424 of 2023 registered with City police station, Jalgaon, district Jalgaon, for the offences punishable under Section 188, 272, 273 and 328 of the I.P.C. be released on bail on furnishing personal bond of Rs.1,00,000/- with one surety of the like amount on following conditions:-

- a. The applicant shall not tamper with the prosecution evidence and shall not pressurize the prosecution witnesses, in any manner.
- b. The applicant shall not involve himself in the offence of like nature in future.
- c. The applicant shall attend the concerned police station as and when required by the investigating officer. The investigating officer shall communicate the applicant about his presence in writing.

(SANJAY A. DESHMUKH, J.)

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