



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 110 OF 2024

SHAIKH KHALED SHAIKH JALIL

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. Shaikh Rauf Shaikh Rasul, Advocate for Applicant

Mr. K.K. Naik, APP for Respondents/State

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 15th APRIL, 2024

PER COURT :

1. Applicant apprehends arrest in C.R. No.252/2023, registered with Kinwat Police Station, Dist. Nanded, for offence punishable under Sections 188, 272, 273, 328 of the Indian Penal Code and Sections 26(2), 27, 23, 30(2)(a) and 59(iv) of the Food Safety and Standards Act, 2006.

2. Police Head Constable Udaysing Rupsing Rathod, Local Crime Branch, Nanded, lodged FIR stating that on the secret information they raided Shan Daily Needs shop at Kinwat Bus Stand and seized prohibited items like scented tobacco and pan masala stored in eight bags worth Rs.35,088/- from Mohammad Yusuf Mohammad Bashiroddin. During investigation, it was found that prohibited articles were bought from applicant.

3. Heard learned advocate for applicant and learned APP for respondents/State. Perused the investigation papers.

4. According to prosecution, prohibited articles including Gutka and scented tobacco worth Rs.35,088 /- is seized in presence of panch witness. Spot panchanama is also prepared. Custody of applicant is necessary for effective investigation.

5. Prosecution claims that during investigation applicant's name is disclosed by co-accused. However, for the reasons best known to investigating officer, premises of applicant is not raided. Crime is registered on 25/10/2023. No useful purpose would be served by remanding applicant in custody, as nothing would be found from him due to passage of time.

6. Except Section 328 all other sections are bailable. There appears substance in the contention of applicant that Section 328 is not attracted in present case and the said issue is already pending before the Apex Court.

7. Pendency of issue of applicability of Section 328 before Apex Court is not disputed by learned APP. Learned APP tried to place reliance on the decision of this Court in **Nagesh Rajshekhar Mense Vs. State of Maharashtra**, reported in **2023 (1) Bom.C.R.(Cri.) 572**.

8. Learned advocate for applicant pointed out that common order passed by learned Single Judge in the above matter is challenged in the Apex Court and the Apex Court in the meantime

has granted interim protection in favour of accused therein. In this view of the matter, applicant has made out case for grant of relief of anticipatory bail.

9. In the result, application is allowed by confirming interim protection granted to applicant by order dated 05/03/2024.

10. Till filing of charge-sheet, applicant shall attend concerned police station as and when called by investigating officer and shall co-operate in the investigation. Applicant shall not tamper prosecution evidence. Applicant shall not indulge in similar offences.

(NITIN B. SURYAWANSHI, J.)