



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

ANTICIPATORY BAIL APPLICATION NO. 160 OF 2024

HARISH RATAN WARKHADE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Ms. Rashmi Kulkarni, a/w Ms. Namita Thole, Advocates h/f Mr. Sanket S. Kulkarni, Advocate for Applicant
Mr. K.K. Naik, APP for Respondents/State

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 15th APRIL, 2024

PER COURT :

1. Applicant apprehends arrest in C.R. No.893/2023, registered with Parner Police Station, Dist. Ahmednagar, for offence punishable under Sections 273, 279, 328 r/w 34 of the Indian Penal Code.

2. FIR is lodged by Police Constable Vivek Dilip Dalavi, stating that on 15/09/2023 at 08:00 p.m., informant and other officials received secret information that two persons are coming in Eeco van at Chaskarvadi Phata of Vadner village, via Shirpur, Taluka Parner, for the purpose of selling Gutka. Accordingly trap was laid and raid was effected, in which accused persons were found transporting and selling prohibited items pan masala and scented tobacco, worth Rs.4,09,600/- through Eeco Van bearing No. MH-12-UN-8302, The same was seized by the raiding party.

3. Heard learned advocate for applicant and learned APP for respondents/State. Perused the investigation papers.
4. Learned advocate for applicant submits that applicant was earlier owner of said Eeco Van bearing No. MH-12-UN-8302 and he has sold it earlier to dealer of second hand vehicles. Applicant has no concern with the present matter
5. It appears from the FIR and investigation papers that prohibited items are seized from the vehicle owned by applicant. Nothing is to be recovered from applicant, therefore, custodial interrogation of applicant is not necessary at this stage.
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 02/02/2024.

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.)