



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.170 OF 2024

Jahed Meer Murtujaali Jagirdar

... Applicant

VERSUS

The State of Maharashtra

... Respondent

.....

Mr. Sachin D. Kunte, Advocate for Applicant

Mr. C.V. Bhadane, APP for Respondent - State

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 01st APRIL, 2024

ORDER :

1. Applicant apprehends arrest in C.R. No.166 of 2023 registered with Ahmedpur Police Station, District-Latur, for offences punishable under Sections 188, 272, 273, 328 of the Indian Penal Code.

2. FIR is lodged by Police Head Constable Suryakant Kalme alleging that he along with the raiding party raided the house of Balaji Baburao Kondgire and Akash Balaji Kondgire on 28.03.2023 at about 1.15 a.m. In the said raid, prohibited Gutkha worth of Rs.28,630/- is seized from their house. Raid was also conducted at the house of Jilani Babu Syed at Hadolti, wherein prohibited Gutkha worth of Rs.48,940/- is

seized. In raid conducted at agricultural land of Ramesh Pawar at about 3.20 a.m., Gutkha worth of Rs.3,10,840/- is seized. Accordingly, FIR is lodged. During the course of investigation, applicant's name is disclosed as supplier of Gutkha. Accordingly, his house at Shirur-Tajban was raided and prohibited Gutkha worth of Rs.21,000- is seized from his residential house.

3. Heard learned advocate for applicant and learned APP for respondent-State. Perused the investigation papers.

4. According to applicant his house is not raided as he is resident of Ahmedpur and his name is Jahed Meer Murtujalli Jagirdar, whereas the house is raided was belonging to Javed Shaikh @ Jahigirdar, who is resident of Shirur-Tajband, Taluka-Ahmedpur.

5. It appears from the investigation papers that name of applicant is disclosed by the co-accused. His house premises is already raided and contraband articles are recovered from him.

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.

9. Applicability of Section 328 is questioned before the Apex Court and issue is pending for consideration and since contraband articles are already seized, nothing is to be recovered from applicant. Hence, his pre-trial custodial detention is not necessary.

10. In the result, application is allowed by confirming interim protection granted to applicant by order dated 12.03.2024.

11. 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 indulge in similar offences.

[NITIN B. SURYAWANSHI]
JUDGE