



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

ANTICIPATORY BAIL APPLICATION NO. 215 OF 2024

MR. SHAIKH IMRAN SHAIKH ISAMIYA

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. Vishal P. Bakal, 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.336/2023, registered with Chaklamba Police Station, Dist. Beed, for offence punishable under Sections 188, 272, 273, 278 and 328 of the Indian Penal Code and Sections 30(2)(a) of the Food Safety and Standards Act, 2006.

2. FIR is lodged by Mahendra Baburao Gaikwad, Food Safety Officer, Latur, stating that on 10/12/2023 at about 02:30 p.m. informant and other officials, on the secret informant received from them, effected raid on the shop of applicant situated near Umapur Bus Stand, Georai, Dist. Beed. At that time, applicant was found in possession of prohibited articles pan masala, tobacco and scented tobacco, worth Rs.7,560/-. Applicant has stored said articles for the purpose of sale, without having permission for the same. Thereafter, applicant ran away from the spot.

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

4. According to prosecution, Food and Safety Officer lodged the FIR that prohibited articles including pan masala, scented tobacco and other tobacco worth Rs.7,560/- is seized in presence of panch witness. Spot panchanama is also prepared.

5. Prosecution has not brought anything on record to show that applicant is owner and possessor of the said pan shop. It is not acceptable that in spite of presence of raiding party applicant has managed to run away at the time of raid. No useful purpose would be served by remanding applicant to the custody.

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 14/02/2024.

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.)