



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.361 OF 2024

Raju @ Shivling S/o Guruling Hamne ... Applicant

VERSUS

The State of Maharashtra
and another ... Respondents

.....
Mr. Panditrao S. Anerao, Advocate for Applicant
Mr. R.B. Dhaware, APP for Respondents - State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 01st APRIL, 2024

ORDER :

1. Applicant apprehends arrest in C.R. No.535 of 2022 registered with Ahmedpur Police Station, District-Latur, for offences punishable under Sections 328, 188, 272, 273 read with section 34 the Indian Penal Code and under Section 59 of the Food Safety and Standards Act.

2. FIR is lodged by Vitthal Satavaji Londhe, Food Safety Officer, Latur, stating that Police Inspector of Ahmedpur Police Station, by communication dated 18.11.2022, informed that Yusuf Tamboli was found in possession of Guthka worth of Rs.1,61,750/-. Nisar Basti was found in possession of Gutkha worth of Rs.2,50,000/-. Gutkha and other contraband articles

worth of Rs.9,45,995/- were seized from Gaus Tamboli, Ibrahim Tamboli, Yusuf Tamboli and Nisar Basti, all resident of Ambajogai Raod, Ahmedpur. During the course of investigation, name of applicant is disclosed as supplier.

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

4. Charge-sheet in the present crime is filed on 23.11.2023. During the course of investigation, recently, residential house of applicant is raided and no contraband articles are found. All the accused persons are already released on bail.

5. 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.

6. 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**.

7. 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.

8. 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.

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

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]
JUDGE