



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.337 OF 2024

Asad S/o Rafiyoddin Tamboli ... Applicant

VERSUS

The State of Maharashtra
and another ... Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO.407 OF 2024

Yusuf Imamsab Tamboli ... Applicant

VERSUS

The State of Maharashtra
and another ... Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO.392 OF 2024

Isar @ Isa S/o Rahemtulla Tamboli ... Applicant

VERSUS

The State of Maharashtra
and another ... Respondents

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Mr. V.C. Patil (Ashtekar), Advocate for Applicants in
ABA/337/2024 and ABA/392/2024

Mr. Sachin D. Kunte, Advocate for Applicant in ABA/407/2024

Mr. S.R. Wakle, APP for Respondents - State

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 01st APRIL, 2024

ORDER :

1. Applicants apprehend arrest in C.R. No.77 of 2024 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, alleging that Police Inspector of Ahmedpur Police Station, by communication dated 31.01.2024, informed that on that day, in the morning between 10.45 to 11.45 a raid was conducted at Bharat Pan Shop of applicant Asad, Kazi Pan Shop of applicant Isar Tamboli and Tamboli Pan Stall, Ahmedpur of applicant Yusuf Tamboli. From Asad's shop, prohibited Gutkha and pan masala worth of Rs.6,800/- was seized. From the shop of applicant Isar Tamboli, prohibited Gutkha and pan masala worth of Rs. 13,895/- was seized and from the shop of applicant Yusuf Tamboli, prohibited Gutkha and pansala worth of Rs.22,230/- was seized.
3. Heard learned advocate for applicant and learned APP for respondent-State. Perused the investigation papers.

4. 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.

5. 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**.

6. Learned advocate for applicants 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, applicants have made out case for grant of relief of anticipatory bail.

7. 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 applicants, hence, their pre-trial custodial detention is not necessary.

8. In the result, applications are allowed by confirming interim protection granted to applicants by orders dated 12.03.2024 and 14.03.2024.

9. Till filing of charge-sheet, applicants shall attend concerned police station as and when called by investigating officer and shall co-operate in the investigation. Applicants shall not indulge in similar offences.

[NITIN B. SURYAWANSHI]
JUDGE