



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

936 ANTICIPATORY BAIL APPLICATION NO. 1831 OF 2024

TABREZ KHAN SULTAN KHAN PATHAN

VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Malpani Mohit Rajendra

APP for Respondent/State: Mr. P. P. Dawalkar

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CORAM : ARUN R. PEDNEKER, J.

DATE : 19.11.2024

P.C. :

1] Heard learned counsel for the applicant and the learned APP for the respondent-State.

2] The applicant is apprehending arrest in connection with Crime No.0284 of 2024, dated 31.08.2024, registered with Virgaon Police Station for the offences punishable under Sections 123, 223, 274, 275 of Bhartiya Nyaya Sanhita, 2023 and Section 59 of the Food Safety and Standards Act, 2006.

3] This Court, by order dated 14.11.2024, passed in ABA No.1670 of 2024, at para no.3 has observed as under:

“Considering the judgment of this Court in the case of Gaurav Jayantbhai Hapani Vs. The State of

***Maharashtra** in Anticipatory Bail Application No.3406 of 2022, decided on 19.01.2023 and also the order passed by the Hon'ble Supreme Court in the case of **Eknath Bhalchandra Patil Vs. The State of Maharashtra** in Petition (s) for Special Leave to Appeal (Cri.) No. 8698/2023, decided on 28.07.2023, wherein in identical fact situation, the Hon'ble Supreme Court so also this Court in the above noted judgments has observed that applicability of Section 328 of Indian Penal Code [123 of the Bhartiya Nyaya Sanhita] is doubted in the case of seizure of tobacco and tobacco products including Gutkha and anticipatory bail has been granted. In the instant case also, except Section 123 of the Bhartiya Nyaya Sanhita, all other offences are bailable and the same is not disputed by the learned APP and the matter pertains to seizure of tobacco and tobacco products including Gutkha."*

4] In the present offence allegation relates to illegal possession of gutkha, pan and tobacco. The applicability of Section 123 of BNS for possession of gutkha and tobacco product is doubted by the Hon'ble Supreme court so also by this court.

5] In view of the above, the application is allowed in the following terms :

i] In the event the applicant is arrested in connection with Crime No.0284 of 2024, dated 31.08.2024, registered with Virgaon Police Station for the offences punishable under Sections 123, 223, 274, 275 of Bhartiya Nyaya Sanhita, 2023 and Section 59 of the Food Safety and Standards Act, 2006, he shall be released on bail on furnishing PR bond of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.

ii] The applicant shall attend the concerned Police Station as and when called by the Investigating Officer.

iii] The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses and other persons concerned with the case.

iv] The applicant shall co-operate with the investigation and also in the proceedings before the trial Court.

6] In the event, the applicant violates any of the conditions specified in this order, it shall be liable to be cancelled.

7] It is also clarified that the observations made in this order are limited to the disposal of the present anticipatory bail application and the trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

8] The application stands disposed of.

[ARUN R. PEDNEKER]
JUDGE

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