



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

ANTICIPATORY BAIL APPLICATION NO. 1781 OF 2023

ASHOK BABAN TONDE
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. G. R. Syed, Advocate for Applicant
Mr. K.K. Naik, APP for Respondent/State
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 15th APRIL, 2024

PER COURT :

1. Applicant apprehends arrest in C.R. No.177/2023, registered with Kharda Police Station, Dist. Ahmednagar, for offence punishable under Sections 188, 272, 273, 328 r/w 34 of the Indian Penal Code.

2. FIR is lodged by Police Constable Ranjit Popatrao Jadhav, stating that while patrolling in the jurisdiction of Karjat Police station, secret information was received to Local Crime Branch, Ahmednagar, that one person is selling prohibited Gutka / Panmasala in his Atul Agency, Kharda. Therefore, raid was effected on 26/09/2023 at about 01:30 p.m. At that time, one Anil Pandurang Londhe was found in possession of various types of Gutka and tobacco, worth Rs.10,974/-. On inquiry it is revealed that said prohibited article is bought from present applicant.

3. Heard learned advocate for applicant and learned APP

for respondents/State. Perused the investigation papers.

4. It appears from the FIR and investigation papers that name of applicant is disclosed by co-accused who is named in the FIR. Surprisingly, though name of applicant is disclosed by co-accused, for reasons best known to investigating officer, no raid is conducted at the premises of applicant. Accused named in the FIR is already released on bail. No useful purpose would be served by remanding applicant in custody, as nothing would be found from him after passage of time.

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. In this

view of the matter, applicant has made out case for grant of relief of anticipatory bail.

8. In the result, application is allowed by confirming interim protection granted to applicant by order dated 26/10/2023.

9. 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.)