



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1827 OF 2023

Lakhan @ Laxman Zumbar Bhise ... Applicant

VERSUS

The State of Maharashtra ... Respondent

.....
Mr. N.R. Thorat, Advocate for Applicant
Mr. A.R. Kale, APP for Respondent - State
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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 01st APRIL, 2024

ORDER :

1. Applicant apprehends arrest in C.R. No.643 of 20243 registered with Karjat Police Station, District-Ahmednagar, for offences punishable under Sections 328, 188, 272, 273 of the Indian Penal Code.

2. FIR is lodged by Police Constable Manoj Murku alleging that while patrolling in the jurisdiction of Karjat Police Station on 07.10.2023 at about 06.00 p.m. a secret information was received to Police Sub-Inspector Nagargoje that one person is selling prohibited Gutkha in his Guptnath Pan Stall, Khed, Taluka-Karjat, District-Ahmednagar. Accordingly a raid was effected at 6.30 p.m. and prohibited

Gutkha and pan masala worth of Rs.3,826/- was seized from Santosh Rama Kakade. During the investigation accused Santosh Kakade has allegedly disclosed the name of applicant that he purchased the contraband articles from applicant.

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

4. During the course of investigation, applicant's premises is raided and nothing is found. 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 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.

7. Considering the factual matrix and the pendency of issue before the Apex Court and as the name of applicant is disclosed by co-accused during the investigation and since nothing is found from applicant, his pre-trial custodial detention and interrogation is not necessary.

8. In the result, application is allowed by confirming interim protection granted to applicant by order dated 02.11.2023.

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 indulge in similar offences.

[NITIN B. SURYAWANSHI]
JUDGE