



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.2098 OF 2023

Rameshwar Gahininath Gunjal

... Applicant

VERSUS

The State of Maharashtra
and another

... Respondents

.....
Mr. A.R. Hange h/f Mr. R.G. Hange, Advocate for Applicant
Mr. S.P. Sonpawale, APP for Respondents - State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 01st APRIL, 2024

ORDER :

1. Applicant apprehends arrest in C.R. No.327 of 2023 registered with Chaklamba Police Station, District-Beed, for offences punishable under Sections 272, 273, 278, 328 of the Indian Penal Code and under section 30(2)(a) of the Food Safety and Standard Act.

2. Food Safety Officer Mahendra Gaikwad lodged report with Chaklamba Police Station on 22.11.2023 that on secret information, officers of Food Safety Department raided Rudra Pan Shop, Savta Mali Chowk, Chaklamba, District-Beed. In the said raid, applicant was found in the said shop in possession of Gutkha and other prohibited material worth of Rs.6,804/-. During the raid, applicant ran away from the spot.

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

4. It is specific case of applicant that he is neither owner nor possessor of the said shop and his name is falsely implicated in the present crime.

5. Prosecution has brought nothing on record to show that applicant was owner and possessor of the said shop. It is difficult to believe that in spite of there being raiding party, applicant managed to run away from the spot.

6. 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.

7. 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**.

8. 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.

9. 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 the applicant. Hence, his pre-trial custodial detention is not necessary.

10. In the result, application is allowed by confirming interim protection granted to applicant by order dated 21.12.2023.

11. 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