



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

ANTICIPATORY BAIL APPLICATION NO. 2106 OF 2023

SHAIKH RAJJAK SHAIKH HABIB AND ANOTHER
VERSUS
THE SUPERINTENDENT OF POLICE AND ANOTHER

...
Mr. Avinash R. Borulkar, Advocate for Applicant
Mrs. P.V. Diggikar, APP for Respondents/State
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 22nd APRIL, 2024

PER COURT :

1. Applicants apprehend arrest in C.R. No.418/2023, registered with Bhokar Police Station, Dist. Nanded, for offence punishable under Sections 188, 272, 273, 328 of the Indian Penal Code and Sections 26(2), 27, 23, 30(2)(a), 59(iv) of the Food Safety and Standards Act, 2006.

2. FIR is lodged by Digambar Pandurang Patil, Police Sub Inspector, Bhokar Police Station, stating that on 14/12/2023, they received secret information that one person is carrying prohibited articles Gutka on Luna bike bearing No. MH-26-BW-5087 from Samatanagar to Mudkheda T-Point. Accordingly raiding party reached at the spot and intercepted said Luna bike. On inspection it was found that accused Shaikh Arbaz Shaikh Latif resident of Mahatma Phule Nagar, Bhokar, was carrying three white gunny bags containing prohibited articles scented tobacco and pan masala

worth Rs.58,300/-. Informant also prepared inspection report and memorandum of panchanama. On inquiry with accused Shaikh Arbaz Shaikh Latif, it was revealed that said prohibited articles belong to Shaikh Rajjak Shaikh Habib and Shaikh Ahmad Shaikh Habib, and he is working as their servant.

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 names of applicants are disclosed by co-accused who is named in the FIR. Surprisingly, though names of applicants are disclosed by co-accused, for the reasons best known to investigating officer, no raid is conducted at the premises of applicants. No useful purpose would be served by remanding applicant in custody, as nothing would be found from him due to 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 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.

8. In the result, application is allowed by confirming interim protection granted to applicant by order dated 14/12/2023.

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 tamper prosecution evidence. Applicants shall not indulge in any similar offences.

(NITIN B. SURYAWANSHI, J.)