

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1264 OF 2023

Bhavesh Dilip ModiApplicant
Versus
The State of Maharashtra Respondent

Mr. Gaurav N. Parkar, Advocate for the Applicant.
Ms. Mahalakshmi Ganapathy, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 02nd FEBRUARY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.56/2023 registered at Nagothane Police Station, District-Raigad under sections 328, 272, 273, 188 read with 34 of IPC and under sections 26(1), 26(2)(i), 26(2)(iv), 27(2), 27(3)(d), 27(3)(e), 30(2)(a) & 59 of the Food Safety and Standards Act, 2006.

2. Heard Mr. Gaurav Parkar, learned counsel for the Applicant and Ms. Mahalakshmi Ganapathy, learned APP for the Respondent-State.

3. The FIR is lodged by the police constable Jitendra Chavan attached to the Local Crime Branch, Raigad. On 13.4.2023, when he was on the patrolling duty, the police officers received a secrete information that in a departmental store by the name “Bhavesh Departmental Store”, gutka and panmasala were sold unauthorizedly. They were the banned articles. The informant told this fact to his superiors. The police arranged to conduct a raid. They went to the departmental store. The present Applicant was present in the store. The police carried out search of the shop. There were gunny bags in the shop containing the gutka packets. There were four such gunny bags. The total cost of the banned article was Rs.22,000/-. The samples were taken and rest of the goods were seized. On this basis, the FIR is lodged.

4. Learned counsel for the Applicant submitted that the Applicant was merely present in the shop but the shop license is not in his name and, therefore, he is not responsible for storage or sell of gutka in that shop. He

submitted that Section 328 of IPC which is the only non-bailable offence applied in the FIR is not made out.

5. Learned APP opposed these submissions. She submitted that the Applicant himself was found in that departmental store. Learned APP relied on the order passed by this Court on 30.1.2024 in A.B.A. No.207/2024. She submitted that the issue of commission of non-bailable offence and in particular attracting Section 328 of IPC is already considered in that order.

6. I have considered these submissions. As far as the facts of this case are concerned, the FIR speaks for itself. The Applicant was present in the shop where the banned articles were stored for sale. Therefore, his involvement is clear enough. As far as other submissions regarding applicability of Section 328 of IPC and other offences are concerned, those issues are squarely covered by the order dated 30.1.2024 passed in A.B.A. No.207/2024.

7. In this view of the matter, the Applicant's custodial interrogation is necessary to find out from where these articles were procured and who had manufactured and transported the same. Since the Applicant's custodial interrogation is necessary, he cannot be protected under Section 438 of Cr.PC.. The Application is rejected.

(SARANG V. KOTWAL, J.)

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