

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

Anticipatory Bail Application No.1324 of 2024

Asif Jafar Shaikh

Aged -36 years, Occ:business

R/at -191 Bapuji Nagar,

Gali No.3, Haji Suleman Mulla

road, Rabodi No.1, Thane(W)-400 601 Applicant.

Vs.

The State of Maharashtra

(through officer in charge

Narpoli police station, Bhiwandi) Respondent.

Mr Aamir Shaikh for the applicant.

Mr Yogesh Dabake, APP for Respondent/ State.

PSI VL Rathod, Narpoli police station is present.

Coram : R.N.Laddha, J.

Date : 13 August 2024.

P.C. :

The applicant apprehends arrest in CR No.868 of 2024, registered at Narpoli Police Station, Thane, for the offences punishable under Sections 328, 188 and 273 of the Indian Penal Code, and Sections 3(1)(zz)(iv), 26(2)(i), 26(2)(iv), 27(1), 59(iii) and 30(2)(a) of the Food Safety and Standards Act, 2006, and has approached this Court for grant of pre-arrest bail.

2. According to the prosecution, on 29 March 2024, the police seized gutkha, scented tobacco, and other prohibited items from a vehicle bearing registration No.KA 01 AJ 0959. The driver and

cleaner of the vehicle were promptly apprehended. The prosecution further alleges that these banned items were meant for delivery to the applicant and other co-accused, who had placed the order.

3. I have heard Mr Aamir Shaikh, the learned Counsel for the applicant, and Mr Yogesh Dabake, the learned Additional Public Prosecutor for the respondent/ State.

4. Mr Aamir Shaikh, the learned Counsel representing the applicant, asserts that the applicant has been falsely implicated in the present crime. The applicant is not named in the FIR, and no substantial reasons have been provided to justify his inclusion in the crime. Additionally, the learned Counsel contends that the banned items have been recovered and the vehicle was seized. In the circumstances, the applicant's custodial interrogation is not necessary.

5. On the other hand, Mr Yogesh Dabake, the learned Additional Public Prosecutor appearing for the respondent/ State, submits that the co-accused disclosed the applicant's identity during the investigation. The applicant is the buyer of the seized prohibited items. The offence is serious, and to uncover the entire transaction chain, the applicant's custody is necessary. According to the learned APP, if the applicant is granted bail, he may tamper with the prosecution evidence/ witnesses.

6. After reviewing the records, it *prima facie* appears that there is no material, including Call Detail Records (CDR) or the particulars of the payment against the delivery of the prohibited articles, to suggest that the applicant purchased or ordered the prohibited articles. The only link between the applicant to the crime is the co-accused's statement, which lacks specific details. Furthermore, the banned articles have already been seized. The applicant has criminal antecedent cannot be a sole ground to deny the relief of pre-arrest bail. The applicant has attended the police station and cooperated with the investigation, as acknowledged by the learned APP. The prosecution's concern about evidence or witness tampering can be addressed by imposing appropriate conditions. Hence, the following order.

Order

(i) The order of interim bail dated 14 May 2024 is made absolute on the terms and conditions incorporated therein.

(ii) In addition, the applicant shall henceforth appear before the investigating officer as and when directed.

(iii) In the event of filing the charge-sheet, the applicant shall regularly attend the proceedings before the jurisdictional Court.

7. It is clarified that the observations are prima facie in nature and are confined to determine entitlement to pre-arrest bail only.
8. The application stands disposed of accordingly.

[R. N. Laddha, J.]