

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1440 OF 2024**

Nazim Rafiq Siddikee	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Tushar Sonawane a/w. Ms. Pooja Satpute for applicant.

Ms. Megha Bajoria for respondent-State.

Mr. Vishal Rajendra Shirke, PSI, Local Crime Branch, Palghar.

CORAM : MANISH PITALE, J.

DATE : 19th JUNE, 2024

P.C. :

. Heard learned counsel for the applicant and learned APP appearing for respondent-State.

2. The applicant has approached this Court apprehending arrest in connection with FIR No.0158 of 2024 dated 14.04.2024 registered at Manor Police Station, District Palghar for offences under Sections 328, 353, 188, 272, 273 and 506 read with Section 34 of the Indian Penal Code, 1860 (IPC) and Sections 26(2), 27(2)(e), 26(2)(a) and 30(2)(a) of the Food Safety and Standards Act, 2006 (FSSA).

3. Except Sections 328 and 353 of the IPC, all the other offences registered under IPC in the present case, are bailable. The other offences are registered under FSSA.

4. As regards Section 328 of the IPC, it is an admitted position that a number of cases are pending in the Supreme Court, with regard to the

question of the very applicability of the said section in such cases pertaining to illegal transport and possession of *gutkha*. In all such cases pending before the Supreme Court, protection from arrest is granted to the accused persons.

5. In the present case, Section 353 of the IPC has been invoked on an allegation that the applicant allegedly pushed a police personnel at the time when his vehicle was sought to be intercepted, which was allegedly carrying *gutkha* packets.

6. The learned counsel for the applicant submitted that the vehicle belongs to the applicant. But, there is lack of material to show that the person, who allegedly pushed the police personnel, was actually the applicant. In this situation, it is submitted that at worst, the applicant can be said to be the owner of the vehicle. It was submitted that the vehicle is already seized and therefore, this Court may consider the present application favourably.

7. The learned APP submitted that this Court may take into consideration the specific allegation pertaining to offence under Section 353 of the IPC. As regards Section 328 of the IPC, the learned APP submitted that the matters are indeed pending before the Supreme Court, wherein the accused persons have been granted interim protection from arrest.

8. This Court has perused the material on record. In the light of the observations made hereinabove, the applicant deserves to be protected, insofar as Section 328 of the IPC is concerned, as the very applicability of the said section is under doubt and it is being examined by the Supreme Court.

9. As regards Section 353 of IPC, the applicant has made out a *prima facie* case in his favour and in any case, custodial interrogation for such a charge may not be necessary as long as the applicant is ready to co-operate with the investigation.

10. The offences under Sections 188, 272, 273 and 506 are all bailable. The offences under FSSA have to be considered in the light of the law laid down by the Supreme Court in the case of *Ram Nath vs. State of Uttar Pradesh and others* (2024 SCC OnLine SC 177), wherein the Supreme Court has clarified the position that the provisions under FSSA would override Sections 272 and 273 of the IPC. In any case, the punishment under FSSA, in the face of the allegations made against the applicant, would range between six months and one year.

11. In view of the above, this Court is inclined to allow the present application.

12. Accordingly, the application is allowed in the following terms:

- (i) In the event the applicant is arrested in connection with FIR No.0158 of 2024 dated 14.04.2024 registered at Manor Police Station, District Palghar for offences under Sections 328, 353, 188, 272, 273 and 506 read with Section 34 of the IPC and Sections 26(2), 27(2)(e), 26(2)(a) and 30(2)(a) of FSSA, he shall be released on bail on furnishing PR Bond of ₹ 50,000/- (Rupees Fifty Thousand only) and one surety in the like amount to the satisfaction of the trial court;
- (ii) The applicant shall remain present before the Investigating Officer on 25.06.2024 and thereafter, as and when the Investigating Officer calls

upon him to remain present.

- (iii) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses and other persons concerned with the case.
- (iv) The applicant shall not indulge in any such activity for which offences have been registered against him in the present case.
- (v) The applicant shall co-operate with the investigation and also in the proceedings before the trial court.

13. In the event, the applicant violates any of the conditions specified in this order, it shall be liable to be cancelled.

14. Needless to say, the observations made in this order are limited to the disposal of the present anticipatory bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

15. The application stands disposed of.

(MANISH PITALE, J)

Priya Kambli