

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1515 OF 2024**

Ayub Khalid Khatri and another	...	Applicants
vs.		
The State of Maharashtra	...	Respondent

Mr. Sagar Shete, i/b. Rizwan Merchant and Associates for applicants.

Mr. Prasanna P. Malshe, APP for respondent-State.

Mr. S. A. Jadhav, H.C., Wadivarhe Police Station, District Nashik Rural.

**CORAM : MANISH PITALE, J.
DATE : 14th NOVEMBER, 2024**

P.C. :

1. The applicants in this application are apprehending arrest in connection with FIR No.0224 of 2022 dated 30.12.2022, registered at Wadivarhe Police Station, District Nashik Rural, for offences under Sections 179, 188, 272, 273, 328 and 420 read with Section 34 of the Indian Penal Code, 1860 (IPC) and Sections 26(2)(iv), 27(2)(e), 26(2)(v), 30(2)(a), 26(2)(iii), 3(1)(zz)(iv) and 59 of the Food Safety and Standards Act, 2006.

2. The allegation against the applicants appears to be that in connivance with the co-accused persons, they dealt with *gutkha*, which is a banned substance in the State of Maharashtra. The main offence in the present case is under Section 328 of the IPC.

3. The very applicability of the said provision in such cases, is in serious doubt as a number of cases are pending before the Supreme Court as regards identical allegations. In such pending cases, the Supreme Court has granted

interim protection from arrest to the accused persons, subject to the accused persons co-operating with the investigation.

4. This Court has also granted relief to such accused persons in a number of applications. The question of law that has arisen in the context of Section 328 of the IPC in such cases, will be resolved when the Supreme Court decides the pending matters.

5. Since the applicants have undertaken to co-operate with the investigation, this Court is inclined to grant relief, subject to specific conditions.

6. In view of the above, the application is allowed in the following terms:

- (i) In the event the applicants are arrested in connection with FIR No.0224 of 2022 dated 30.12.2022, registered at Wadivarhe Police Station, District Nashik Rural, they shall be released on bail on furnishing PR Bonds of ₹ 1,00,000/- each with one or two sureties in the like amount to the satisfaction of the trial Court.
- (ii) The applicants shall remain present before the Investigating Officer on 18.11.2024 and 19.11.2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when called by the Investigating Officer.
- (iii) The applicants shall not indulge in any activity of dealing with *gutkha* in the State of Maharashtra as it is a banned substance.
- (iv) The applicants shall not tamper with the evidence of the prosecution in any manner. They shall not influence the informant, witnesses and other persons concerned with the case.
- (v) The applicants shall co-operate with the investigation and also in the proceedings before the trial court.

7. In the event, the applicants violate any of the conditions specified in this order, it shall be liable to be cancelled.

8. It is also clarified that 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.

9. The application stands disposed of.

(MANISH PITALE, J)

Priva Kambli