

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

ANTICIPATORY BAIL APPLICATION NO.1640 OF 2024

Mr Afsar @ Ashraf Husain Haider Rizvi,
Aged- 42 years, Occupation – Business,
Residing at-301, B-Wing, Rafiqun Manzil,
Bombay Colony, Near Garib Nawaz Masjid,
Mumbra Thane-400 612. ... Applicant

v/s.

The State of Maharashtra
Through Vashi Police Station ... Respondent

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Mr Ali Kashif Khan Deshmukh, a/w. Ms Hitanshi Gajaria, Ms
Bhagyashree Sortur and Ms Snigdha Khandelwal, for the
Applicant.

Ms Mahalaxmi Ganapathy, a/w. Ms Rashmi Tendulkar, APP, for
Respondent State.

API Bile, Vashi Police Station, is present.

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Coram : R.N. Laddha, J.

Date : 21 June 2024

P.C. :

Heard Mr Ali Kashif Khan Deshmukh, the learned Counsel
for the applicant and Ms Mahalaxmi Ganapathy, the learned
Additional Public Prosecutor for the State.

2. This is an application for pre-arrest bail filed by the
applicant, apprehending arrest in CR No.106 of 2024, registered
with Vashi Police Station, Navi Mumbai, for the offences
punishable under Sections 188, 272, 328, 273 of the Indian Penal
Code and 26, 27 (2)(e) and 59 of the Food Safety and Standards

Act, 2006.

3. It is the case of the prosecution that on 19 March 2024, Police Naik Asifshah Jakishah Sayyed, while on patrolling duty, around 1:00 p.m., received information about a tempo travelling from Panvel to Sion. They pursued and stopped the vehicle. The two occupants gave evasive answers when asked about the bills of the goods in the vehicle. Subsequently, panchas were summoned, and upon inspection of the vehicle, the individuals revealed their identities. They were found in possession of prohibited gutkha and pan masala worth Rs.13,60,000/-. These items are banned in the State of Maharashtra. During an interrogation, the individuals stated that they were transporting these prohibited items on the instructions from the applicant, from Pimpri-Chinchwad to Jogeshwari, Mumbai. As a result, these articles were seized, and a panchanama was prepared leading to the registration of a crime.

4. Mr Ali Kashif Khan, the learned Counsel for the applicant, submits that the applicant has not committed any offence as alleged and is in no way concerned with the crime. According to the learned Counsel, Section 328 of IPC is not attracted against the applicant. The learned Counsel further submits that all the offences except those under Section 328 of IPC are bailable.

Section 328 IPC is not applicable in this case since there are no allegations of the gutkha administration. The learned Counsel claims that the co-accused were unknown to the applicant and the applicant's implication is solely based on their statement, which constitutes weak evidence. Moreover, the co-accused have already been granted bail. The applicant is ready to cooperate with the investigation. In support of his contention, the learned Counsel relied upon the following authorities: (i) *Abhijeet Jitendra Lolage v. State of Maharashtra*¹, (ii) *Suraj Harish Thakkar v. The State of Maharashtra*², (iii) *Pramod s/o Rameshrao Bangar v. The State of Maharashtra*³, (iv) *Joseph Kurian Philip Jose v. State of Kerala*⁴, and (v) *Anand Ramdhari Chaurasia & Anr. v. The State of Maharashtra & Ors*⁵.

5. On the other hand, Ms Mahalaxmi Ganapathy, the learned APP, representing the State, submits that a huge stock of prohibited articles has been seized. The co-accused were apprehended while transporting these goods. They claim that they transported these prohibited articles under the applicant's direction. The applicant is the mastermind behind the crime. There are criminal antecedents against the applicant. A similar

1. Diary No.2806 of 2023, Supreme Court.

2. ABA No.2896 of 2022, Bombay High Court.

3. ABA No.57 of 2020, Bombay High Court at Aurangabad.

4. (1994) 6 SCC 535.

5. Criminal Writ Petition No.3607 of 2019, Bombay High Court.

nature of offence was registered against him in the past also. The Call Detail Records (CDRs) indicate that the applicant is in constant touch with the co-accused involved in transporting these prohibited articles.

6. The learned APP further submits that, in addition to Section 328 IPC, Section 511 IPC could also be invoked. The investigation is at a preliminary stage. To complete the entire transaction chain, the investigating agency must trace the origin of those prohibited items, including identifying manufacturers, suppliers, sellers, and shopkeepers. The learned APP emphasises that the offence is grave and must be dealt strictly to prevent these articles' proliferation within society. The applicant's custodial interrogation is urgent to avoid losing vital links. In support of her contentions, the learned APP cites the decision of this Court in *Mohd. Sadiq Adam Shaikh v. State of Maharashtra*⁶.

7. Upon perusing the record, it transpires that the present case does not merely rely on the co-accused's statement to implicate the applicant. The co-accused transported the banned items at the behest of the applicant. The applicant claims not to have known the co-accused despite maintaining constant communication with them while transporting these prohibited articles. *Prima facie*, there is material pointing to the applicant's involvement in the

6. ABA No.207 of 2024

crime. Moreover, the applicant has criminal antecedents, including an earlier offence of a similar nature. The underground gutkha business is an organised crime against the society with inter-state ramifications, involving a breach of Central Excise and Income tax laws. Such criminal activity must be curbed, and a detailed investigation regarding the illegal manufacture, supply, distribution, and sale of these prohibited items must be carried out with utmost seriousness.

8. It is a settled principle in law that the power to grant anticipatory bail application is extraordinary. While it has been acknowledged in many instances that regular bail is considered general rule, the same cannot be said for anticipatory bail. The decision to grant anticipatory bail should be exercised with careful and prudent discretion by the Court, considering each case's specific circumstances. When exercising this power, the Court must exercise caution, as granting protection in serious cases could potentially lead to miscarriage of justice or hinder investigation by allowing tampering or destruction of evidence. All these aspects are highlighted in *Shrikant Upadhyay & Ors. v. State of Bihar & Anr.*⁷

9. Given the gravity of the offence and its implications on society, the custodial interrogation of the applicant is essential.

7. 2024 SCC OnLine SC 282.

The cases cited by the learned Counsel for the applicant do not apply to the facts and circumstances of the present case. In light of the foregoing, this Court is not inclined to exercise its discretion in favour of the applicant. As a result, the present application stands rejected.

(R.N. Laddha, J.)