IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1698 OF 2024

Gulzar Ahmed s/o Aqeel Ahmed
Aged 30 years, Occ:business
R/at: House No.271, Bisham,
Mirzapur, Post Mishan, Muhamdapur,
Azamgadh, UP. ... Applicant

v/s.

The State of Maharashtra
(Through Shanti Nagar Police Station) ... Respondent.

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Mr Kushal Mor i/by Rohan Chauhan for the Applicant.

Mr Avinash A. Naik, APP, for Respondent State.

GPSI Salekar a/w PN Shinde, Shantinagar Police Station, is present.

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Coram : R.N. Laddha, J.
Date : 25 June 2024

P.C. :

By the present application, the applicant seeks pre-arrest bail in connection with CR No.383 of 2024, registered at Shanti Nagar Police Station, Thane, for the offences punishable under Sections 328, 273, 272, 188, 171 read with 34 of the Indian Penal Code, and Sections 26(2)(i), 26(2)(iv), 27(1), 3(1)(zz)(iv), 59(iii), 26(2), 26(4), and 30(2)(a) of the Food Safety and Standards Act, 2006.

2. According to the prosecution, on 30 January 2024, after

receiving secret information, a tempo was intercepted and searched at Bhiwandi, Thane. The inspection revealed that the tempo carried the prohibited pan masala and scented tobacco worth Rs.12,45,600/-. During the investigation, the co-accused, Mohammad Ali Anseer Khan, who is the driver of the tempo, revealed that the co-accused Riyaz Ahmed Shaikh is the owner of the tempo; the applicant, along with co-accused Rajkumar Balasaheb Sapate, are the transporters of the banned items; and the co-accused Lala Bhai alias Javed is the seller of these prohibited articles.

3. I have heard Mr Kushal Mor, the learned Counsel, appearing on behalf of the applicant, and Mr Avinash Naik, the learned Additional Public Prosecutor, representing the respondent/ State.

4. Mr Kushal Mor, the learned Counsel representing the applicant, asserts the applicant's innocence and submits that the applicant has been falsely implicated in the present crime. He further submits that the applicant is not involved in selling these prohibited items and that they were found in the possession of the co-accused driver. The applicant has no criminal antecedents. The learned Counsel argues that there is no material to connect the applicant to the present crime except for the co-accused's statement. He points out that the co-accused Riyaz Ahmed Shaikh, who owns the tempo, has been enlarged on anticipatory bail, and the co-accused Mohammad Ali Anseer Khan, the tempo driver, has been released on regular bail. As the contraband

has been seized, nothing remains to be recovered from the applicant. In these circumstances, the applicant's custodial interrogation is not necessary.

5. Conversely, Mr Avinash Naik, the learned Additional Public Prosecutor representing the respondent/ State, submits that the applicant is the transporter of the forbidden articles. The investigation is ongoing, and the respondent has applied for the applicant's Call Detail Records (CDRs), which have not yet been received. The offence is serious, and the applicant's custody is necessary to ascertain the entire supply chain before the vital links are lost. If the applicant is enlarged on bail, he may tamper with the evidence or influence the witnesses.

6. It is a settled position in law that the power to grant anticipatory bail is extraordinary. While it has been acknowledged in many instances that regular bail is considered a general rule, the same analogy cannot be applied to anticipatory bail. The decision to grant anticipatory bail must be exercised with careful and prudent discretion by the Court, considering each case's specific circumstances. A straight jacket formula cannot be applied. While exercising this power, the Court must exercise caution, as granting protection in serious cases could potentially lead to a miscarriage of justice or hinder the investigation by allowing tampering or destruction of evidence. A profitable reference in this regard can be made to the decision of the

Hon'ble Supreme Court in ***Shrikant Upadhyay & Ors. v. State of Bihar & Anr.***[1]

7. The underground gutkha business is an organised crime against 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 banned articles must be carried out with utmost seriousness.

8. Upon perusing the record, it *prima facie* appears that the applicant is a transporter of the prohibited items. The applicant's role differs from that of the co-accused, who are released on bail. The investigation into the present crime is in progress and the CDRs are yet to be obtained. There is material to suggest the involvement of the applicant in the crime and the detailed investigation is required to be carried out. Given the gravity of the offence and its implications on society, the applicant's custodial interrogation would be necessary. In view of the foregoing, the present application stands rejected.

(R.N. Laddha, J.)

1 2024 SCC OnLine SC 282.