

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1860 OF 2024

Nitesh Ramesh Babare ... Applicant
Vs.
State of Maharashtra and another ... Respondents

Mr. Tushar Sonawane a/w. Mr. Parth Chande and Ms. Pooja Satpute for Applicant.

Mr. Mayur S. Sonavane, APP for Respondent-State.

CORAM : MANISH PITALE, J.

DATE : JULY 19, 2024

P.C. :

. Heard Mr. Tushar Sonawane, learned counsel for the applicant and Mr. Mayur Sonavane, learned APP for the respondent-State.

2. The applicant apprehends arrest in connection with FIR No.0158 of 2024 dated 14.04.2024 registered at Manor Police Station, District - Palghar, for offences under Sections 188, 272, 273, 328, 353 and 506 read with Section 34 of the Indian Penal Code, 1860 (IPC) as also under Sections 26(2), 26(2)(a), 27(2)(e) 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 offence under 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. As regards offence under Section 353 of the IPC, specific allegation is not made against the applicant. In fact, a co-accused person, against whom the allegation was made of having pushed a police personnel, was granted anticipatory bail by this Court by order dated 19.06.2024, passed in Anticipatory Bail Application No.1440 of 2024. Therefore, the applicant in the present application has indeed made out a case on parity in his favour.

6. The applicant undertakes to co-operate with the investigation and therefore, this Court is inclined to favourably consider the prayer made in the present application.

7. Additionally, it is found that the offences under Sections 188, 272, 273 and 506 of the IPC are all bailable offences. 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.

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

9. Accordingly, the application is allowed in the following terms:-

- A. 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, he shall be released on bail on furnishing PR Bond of Rs.50,000/- (Rupees Fifty

Thousand only) with one surety in the like amount to the satisfaction of the trial Court;

- B. The applicant shall remain present before the investigating officer on 22.07.2024 and thereafter, as and when the investigating officer calls upon him to remain present;
- C. 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;
- D. The applicant shall not indulge in any such activity for which offences have been registered against him in the present case;
- E. The applicant shall co-operate with the investigation and also in the proceedings before the trial Court.

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

11. 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.

11. The application stands disposed of.

(MANISH PITALE, J.)