

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1905 OF 2024

Babaso Haridas Sartape	...	Applicant
Vs.		
State of Maharashtra	...	Respondent

Mr. Nilesh Wable a/w. Ms. Stefy J. Dias i/b. Mr. Umesh R. Mankapure for Applicant.

Mr. Babu V. Holambe-Patil, APP for Respondent-State.

CORAM : MANISH PITALE, J.
DATE : JULY 19, 2024

P.C. :

1. Heard Mr. Wable, learned counsel for the applicant and Mr. Holambe-Patil, learned APP for the respondent-State.

2. The applicant apprehends arrest in connection with FIR No.0208 of 2024 dated 07.06.2024 registered at Pandharpur Rural Police Station, District - Solapur Rural, for offences under Sections 188, 272, 273, 328 read with Section 34 of the Indian Penal Code, 1860 (IPC) as also under Sections 26(2)(i), 26(2)(ii), 26(2)(iv), 27(3)(e), 30(2)(a) and 59 of the Food Safety and Standards Act, 2006 (FSSA).

3. The learned counsel for the applicant submits that insofar as Section 328 of the IPC is concerned, in a series of cases pending before the Supreme Court, interim protection has been granted, as the issue as to whether in such circumstances, Section 328 of the IPC can be invoked at all is pending consideration. The offences under Sections 188, 272 and 273 of the IPC are all bailable and the other offences are registered under FSSA. As regards the provisions of FSSA, reliance is placed on the judgement of Supreme Court in the case of *Ram Nath Vs. State of Uttar Pradesh and others*, **2024 SCC OnLine SC 177**, particularly

paragraphs 25 to 27 thereof, to indicate that the provisions of FSSA override the provisions of the IPC.

4. On this basis, the learned counsel for the applicant submits that this Court may consider granting anticipatory bail to the applicant, as he undertakes to co-operate with the investigation.

5. The learned APP appearing for the respondent-State opposes the prayer made in the present application, submitting that the investigation is at a preliminary stage as the FIR has been registered recently on 07.06.2024.

6. The judgement of the Supreme Court in the case of **Ram Nath Vs. State of Uttar Pradesh and others** (*supra*) clearly lays down the proposition that the provisions of FSSA override the provisions of Sections 272 and 273 of the IPC. The offences under Sections 188, 272 and 273 of the IPC are bailable, which leave only the offence under Section 328 of the IPC.

7. The learned APP also does not dispute the fact that a number of cases are pending before the Supreme Court on the question as to whether Section 328 of the IPC can at all be invoked in such cases concerning procurement and sale of *Gutka*. In all such cases, the Supreme Court has granted interim protection to the accused persons. This Court is informed that hearing in the said cases is part-heard and the last date of hearing before the Supreme Court was 15.07.2024.

8. Considering the aforesaid material, this Court is of the opinion that the present application can be allowed, subject to appropriate conditions.

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

- A. In the event the applicant is arrested in connection with FIR No.0208 of 2024 dated 07.06.2024 registered at Pandharpur Rural Police Station, District - Solapur Rural, 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;
- B. The applicant shall appear before the investigating officer on 22.07.2024 between 11:00 a.m. and 1:00 p.m. and thereafter, as and when required, till filing of the charge-sheet. The applicant shall co-operate with the investigating officer during the course of investigation;
- C. The applicant shall not influence the informant, witnesses or any person concerned with the case and he shall not tamper with the evidence.

10. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

11. The application is disposed of.

(MANISH PITALE, J.)