

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

Anticipatory Bail Application No. 1967 of 2024

Murshid Abdul Hameed Shaikh

Age 30 years, Occ. Business,

R/at.: C Block, Next to Gurudwara,

Ulhasnagar.

..Applicant

Vs.

The State of Maharashtra

(Through Ulhasnagar Police Station)

..Respondent

Mr Marmik Shah i/b. Rohan Chauhan, for the applicant.

Mr MG Patil, APP, for the respondent/ State.

API PK Gite, Ulhasnagar Police Station, is present.

Coram: R. N. Laddha, J.

Date: 16 July 2024

P.C.

Heard Mr Marmik Shah, the learned Counsel for the applicant and Mr MG Patil, the learned Additional Public prosecutor representing the respondent/ State.

2. This is an application for pre-arrest bail filed by the applicant, apprehending arrest in CR No.730 of 2024, registered at Ulhasnagar Police Station, Thane, for the offences punishable under Sections 328, 188 and 272 of the Indian Penal Code (IPC), and Sections 26(2)(i), 27(3)(e), 3(1)(zz)(v), 3(1)(zz)(i), 26(2)(iv), 30(2)(a) and 59 of the Food Safety and Standards Act, 2006.

3. It is the case of the prosecution that on 25 May 2024, based on the information, the investigating agency conducted a raid at the applicant's shop. During the search, the prohibited items worth Rs.12,35,907/- were found stored in the shop. As a result, these articles were seized, and a panchanama was prepared, resulting in the registration of the crime.

4. Mr Marmik Shah, the learned Counsel appearing on behalf of the applicant, asserts that the applicant is innocent and has no connection to the crime. The applicant neither owns nor is in possession of the shop or the alleged prohibited items. According to the learned Counsel, Section 328 of the IPC does not apply to the applicant as there are no allegations related to the administration of gutka. Additionally, Mr Shah, contends that all sections, except those under Section 328 of IPC, are bailable. The applicant is ready and willing to cooperate with the investigation.

5. On the other hand, Mr MG Patil, the learned Additional Public Prosecutor representing the respondent/ State, asserts that a substantial cache of prohibited articles has been seized. The applicant holds the license for the premises. The applicant has criminal antecedents, having previously registered two similar crimes. The investigation is at a nascent stage and aims to trace the origin of the banned items, including identifying manufacturers, suppliers, sellers, and shop keepers. The learned APP emphasises the gravity of the that offence and the need for strict actions to prevent the proliferation of these

items within society. Urgent custodial interrogation of the applicant is necessary to avoid losing crucial leads. In support of these arguments, the learned APP cites the decision of this Court in ***Mohd Sadiq Adam Shaikh Vs State of Maharashtra***¹.

6. Upon perusing the records, it appears that the applicant holds the license for the shop in question. The leave and license agreement expressly prohibits storing any banned items on the premises. *Prima facie*, there is substantial material implicating the applicant in the crime. Moreover, the applicant has criminal antecedents, including two prior incidents of a similar nature. The underground gutka business is an organised crime against society with inter-State implications, involving violations of Central Excise and Income-tax laws. It is imperative to curb such criminal activity, necessitating a thorough investigation with utmost seriousness into the illegal manufacturing, supply, distribution, and sale of these prohibited items.

7. 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

¹ ABA No.207 of 2024.

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. Vs State of Bihar & Anr.*²

8. Given the gravity of the offence and its implications on society, the custodial interrogation of the applicant is essential. In light of the foregoing, this Court is not inclined to exercise its discretion in favour of the applicant. The application stands rejected.

(R. N. Laddha, J.)