

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

ANTICIPATORY BAIL APPLICATION NO. 1979 OF 2024

Mohammed Khaja Ansari	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Tushar Sonavane for the Applicant.
Mr. Bapu V. Holambe-Patil, APP for Respondent-State.

CORAM: MANISH PITALE, J.
DATE : 26th JULY 2024

P.C. :

. Heard learned counsel for the applicant and learned APP for respondent-State.

2. The applicant is apprehending arrest in connection with FIR No. 0244 of 2024 dated 16th May 2024 registered at Solapur Taluka Police Station, Dist. Solapur, for offences under Sections 188, 272, 273 and 328 of Indian Penal Code, 1860 (IPC) and Sections 26(2)(i), 26(2)(ii), 26(2)(iv), 27(3)(e), 30(2)(a) and 59 of Food Safety and Standards Act, 2006 (FSSA).

3. The learned counsel for the applicant relies upon number of orders passed by this Court in favour of accused persons facing similar prosecution. It is brought to the notice of this Court that the applicant, along with another, has filed Writ Petition No. 2945 of 2024 for quashing of the aforesaid FIR, wherein, on 10th July

2024, the Division Bench of this Court has admitted the writ petition on the ground that the issues raised in the petition are pending consideration before the Supreme Court and further proceedings arising out the said FIR have been stayed as against the applicant. It is further submitted that except offence under Section 328 of the IPC, all the other offences under the IPC are bailable and in respect of offences under FSSA, this Court has already granted relief to identically situated persons by referring to judgment of the Supreme Court in the case of ***Ram Nath vs. State of Uttar Pradesh and others, 2024 SCC OnLine SC 177.***

4. The learned APP does not dispute fact that the issue is pending before the Supreme Court, as to whether Section 328 of the IPC can at all be invoked in such cases. He further submits that in the present case, the applicant is a repeat offender and that he has violated conditions imposed upon him when anticipatory bail was granted in connection with another FIR registered for identical offences. This aspect was taken into consideration by the Sessions Court while rejecting the anticipatory bail application of the applicant and therefore, this Court may not show any indulgence to the applicant.

5. This Court has considered the rival submissions. In the present case, it is undisputed that the very applicability of Section 328 of the IPC, which is the only non-bailable offence, in similar cases, is pending before the Supreme Court. In pending matters before the Supreme Court, the accused persons have been granted

interim protection and on that basis, this Court has also granted interim protection from arrest to a number of accused persons.

6. The reliance placed on behalf of the applicant on the judgment of the Supreme Court in the case of ***Ram Nath vs. State of Uttar Pradesh and others*** (supra) is also justified and the same is taken note of by this Court while granting relief to identically situated accused persons in various orders annexed to the present application.

7. Therefore, the applicant has made out a case for granting anticipatory bail. As regards, the applicant being a repeat offender, this Court is of the opinion that if the activities of the applicant have led to registration of further offences, that itself may not be held against the applicant and the role of the applicant in each individual case will have to be considered. This Court is of the opinion that the controversy pending before the Supreme Court, on being put to rest, will bring clarity to the position of law and till that time, no purpose would be served in taking the applicant into custody. The applicant has undertaken to cooperate with the investigation and to abide by all the conditions that may be imposed by this Court.

8. 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. 0244 of 2024 dated 16th May 2024 registered at Solapur Taluka Police Station, Dist. Solapur, he shall be released on bail on furnishing PR Bond of Rs.50,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(b) The applicant shall remain present before the Investigating Officer on 29th July 2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when required by the Investigating Officer. The applicant shall cooperate with the investigation.

(c) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses or any other person concerned with the case.

9. 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.

10. The application is disposed of.

MANISH PITALE, J.