

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2830 OF 2024

Sandip Shivaji Gaikar.	...Applicant.
Versus	
The State of Maharashtra	...Respondent

Mr. Rajesh P. Khobragade, a/w. Mr. Virat V. Dhotre, for Applicant.
Ms. R.V. Newton, APP for Respondent-State.

CORAM: MANISH PITALE, J

DATED: 22nd OCTOBER 2024

PC:-

1. Heard the learned Counsel for for the Applicant and the learned APP for the Respondent-State.
2. The Applicant is apprehending arrest in connection with FIR No. 0369 of 2024 dated 06.09.2024 registered at Police Station, Wavi, District-Nashik, for offences under sections 123, 274, 275, 223 of Bharatiya Nyay Sanhita, 2023 (for short “BNS”).
3. The allegation in the present case is that banned substance i.e. gutaka was found in the backyard of the applicant’s house.

4. Learned Counsel for the applicant submits that there is some confusion about the name of the accused person in the first place and that in any case the only non-bailable offence in the present case is offence under section 123 of the BNS (equivalent to offence under section 328 of the Indian Penal Code). It is submitted that in such cases, this Court has been granting relief of anticipatory bail as the question of the very applicability of the aforesaid provision in the facts of such cases is pending consideration before the Supreme Court.

5. Learned APP is unable to dispute the fact that such a question is indeed pending consideration before the Supreme Court in a number of petitions, which are said to be listed for hearing.

6. This Court is of the opinion that the applicant has made out a case for relief of anticipatory bail. The very applicability of the section 328 of the IPC, which is equivalent to section 123 of the BNS, is pending consideration before the Supreme Court in a number of petitions that have been clubbed together for hearing. In such cases, the Supreme Court has been granting relief of protection from arrest to the accused persons. This Court has also granted such relief. In such circumstances, so long as the applicant is ready to cooperate to the investigation, relief of anticipatory bail can be granted.

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

- (A) In the event the applicant is arrested, he shall be released on bail, in connection with FIR Nos.0369 of 2024, dated 06.09.2024, registered at Police Station Wavi, District Nashik, on furnishing PR Bonds of ₹ 25,000/-, with 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 in connection with the said FIR, on 25th October, 2024, between 10:00 a.m. and 12:00 noon and thereafter as and when called by the Investigating Officer.
- (C) The applicant shall cooperate with the investigation and he shall give details of his permanent address to the Investigating Officer.
- (D) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.

8. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail.

9. 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.

10. The application is disposed of.

(MANISH PITALE,J.)

ARUNA
SANDEEP
TALWALKAR

Digitally signed by
ARUNA SANDEEP
TALWALKAR
Date: 2024.10.22
18:23:07 +0530