

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

ANTICIPATORY BAIL APPLICATION NO. 3001 OF 2024

Namdeo Khandu Rathod ... Applicant
Versus
The State of Maharashtra ... Respondent

Mr. Prashant S. Hagare a/w Mr. Krishna A. Tarde for Applicant.
Ms. Megha S. Bajoria, APP for Respondent-State.
Mr. G. B. Wanole, Indapur Police Station, Dist. Pune.

**CORAM: MANISH PITALE, J.
DATE : 14th NOVEMBER 2024**

P.C. :

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

2. The applicant is apprehending arrest in connection with FIR No.0577 of 2024 dated 17th July 2024 registered at Indapur Police Station, Dist. Pune, for offences under Sections 65(c), 65(d) of the Maharashtra Prohibition Act, 1949 and Section 123 of the Bharatiya Nyaya Sanhita, 2023 (BNS).

3. It is alleged that upon receiving information that the applicant was indulging in illicit manufacturing of country liquor, raid was conducted, wherein alcohol was recovered while the applicant allegedly ran away from the place.

4. The learned counsel for the applicant submits that apart from the provisions of the Maharashtra Prohibition Act, only offence under Section 123 of the BNS is registered, which is

equivalent to the erstwhile Section 328 of the Indian Penal Code, 1860 (IPC). He placed reliance on order of this Court at Aurangabad Bench, in the case of ***Niraj s/o Jagdish Choudhari v/s. The State of Maharashtra*** (order dated 8th April 2022 passed in Anticipatory Bail Application No. 201 of 2022) to contend that in similar circumstances, the Court had held that *prima facie* case is not made out for offence under Section 328 of the IPC. Relief of anticipatory bail was granted.

5. The learned APP submits that the alcohol seized from the place of the incident has been sent for chemical analysis and the report is awaited.

6. Considering the fact that the report is still awaited and in the light of the position of law appreciated by this Court in the aforementioned case of ***Niraj s/o Jagdish Choudhari v/s. The State of Maharashtra*** (supra), this Court is of the opinion that in the facts and circumstances of the present case also, it can be said that *prima facie* the ingredients of the offence under Section 123 of the BNS (erstwhile Section 328 of the IPC) are not made out. That leaves only the offences under the provisions of the Maharashtra Prohibition Act, which provide for punishment for a period between 3 years to 5 years. The applicant does not have any criminal antecedents. Therefore, this Court is inclined to allow the application.

7. Accordingly, the application is allowed in the following

terms :

(a) In the event the applicant is arrested in connection with FIR No. 0577 of 2024 dated 17th July 2024 registered at Indapur Police Station, Dist. Pune, he shall be released on bail on furnishing PR Bond of Rs.50,000/- and one or two sureties in the like amount.

(b) The applicant shall remain present before the Investigating Officer on 18th November 2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when called 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.

8. 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.

9. The application is disposed of.

MANISH PITALE, J.