

(Corrected as per speaking to minutes order dated 19.12.2024.)
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 3304 OF 2024

Mubarak Salim Mujawar ... Applicant
vs.
The State of Maharashtra ... Respondent

Mr. Jayant Bardeskar for applicant.

Mr. Mayur S. Sonavane, APP for respondent-State.

CORAM : MANISH PITALE, J.
DATE : 10th DECEMBER, 2024

P.C. :

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

2. In this application, the applicant is apprehending arrest in connection with FIR No.0359 of 2024 dated 01.11.2024, registered at Miraj City Police Station, District Sangli, for offences under Sections 123, 274, 275 and 223 of the Bharatiya Nyaya Sanhita, 2023 and Sections 26(2)(i), 26(2)(iv), 27(3)(d), 27 (3)(e), 30(2)(a) and 59 of the Food Safety and Standards Act, 2006.

3. The only non-bailable offence in the present case is offence under Section 123 of the BNS, 2023, which is equivalent to Section 328 of the Indian Penal Code, 1860 (IPC). The allegations in the present case concern storage of *gutka*, which is a banned substance in the State of Maharashtra.

4. The question as to whether in such cases, offence under Section 123 of the BNS (equivalent to Section 328 of the IPC), can be registered, itself is in shadow of doubt, for the reason that this question is pending consideration before the Supreme Court in a number of cases. In such cases, the Supreme Court has been granting

interim protection from arrest to the accused persons, pending final decision on the aforesaid question. This Court has also granted relief of anticipatory bail in such matters, subject to imposing appropriate conditions on the accused.

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

- (i) In the event the applicant is arrested in connection with FIR No.0359 of 2024 dated 01.11.2024, registered at Miraj City Police Station, District Sangli, he shall be released on bail on furnishing PR Bond of ₹ 50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.
- (ii) The applicant shall remain present before the Investigating Officer on 13.12.2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when called by the Investigating Officer.
- (iii) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses and other persons concerned with the case.
- (iv) The applicant shall co-operate with the investigation and also in the proceedings before the trial court.

6. In the event, the applicant violates any of the conditions specified in this order, it shall be liable to be cancelled.

7. It is also clarified that the observations made in this order are limited to the disposal of the present anticipatory bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

8. The application stands disposed of.