

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3375 OF 2024

Pooja Laumik Biravat

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Ranjeet Pawar a/w Mr. Saurabh Desai, for Applicant.
- Mr. Prasanna P. Malshe, APP for Respondent.

CORAM : MANISH PITALE, J.

DATE : 13th DECEMBER, 2024.

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MALANI

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P. C. :

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

2. The applicant herein is apprehending arrest in connection with First Information Report No.1132 of 2024 dated 17th November, 2024, registered at Police Station Yawat, District Pune (Rural), for offence under Section 123 of the Bharatiya Nyaya Sanhita, 2023 (BNS) and Section 65(5) of the Maharashtra Prohibition Act, 1949.

3. The allegation against the applicant is that when a police raid was conducted at the spot of the incident, she allegedly fled away, leaving behind equipment showing manufacturing of intoxicating and poisonous country liquor. It is alleged that such liquor was found at the spot and it was sent for chemical analysis.

4. The learned counsel for the applicant submits that in a similar case, where offence under Section 328 of the Indian Penal Code, 1860 (IPC) was registered against the accused person, this Court had granted protection from arrest, subject to the accused therein cooperating with the investigation, primarily on the ground that in such facts applicability of Section 123 of the BNS (equivalent to Section 328 of IPC), *prima facie* could not be said to be made out. It was submitted that the applicant in the said case relied upon the order dated 14th November, 2024, passed in Anticipatory Bail Application No.3001 of 2024 (Namdeo Khandu Rathod Vs. The State of Maharashtra), in support of the said contention.

5. It was further submitted that in that light, only offence under Section 65(c) of the Maharashtra Prohibition Act, remains which provides for punishment for a period between 3 years to 5 years. It is submitted that the applicant was said to have been identified by a police personnel and this also raises doubt about the involvement of the applicant in the present case. On this basis, the applicant seeks relief from this Court.

6. On the other hand, the learned APP opposed the present application, submitting that the laboratory report has confirmed the suspicion about the liquor being intoxicating country liquor illegally manufactured by the applicant. It is highlighted that the applicant has one criminal antecedent

pertaining to similar offences registered against her. It is submitted that the act of illegally manufacturing country liquor poses a serious threat to the society, as consumption of the same can lead to disastrous consequences for individuals.

7. This Court has considered the rival submissions. A perusal of the aforesaid order passed by this Court in the case **Namdeo Khandu Rathod Vs. The State of Maharashtra** (supra), indeed shows that the very ingredients of offence under Section 123 of BNS (equivalent to Section 328 of the IPC), *prima facie* cannot be said to be made out. In the said order, this Court had relied upon an earlier order dated 08th April, 2022, passed by this Court (Coram : Smt. Vibha Kankanwadi, J.) in Anticipatory Bail Application Nos.201 of 2022 and 162 of 2022, wherein reliance was placed on an earlier judgment of this Court in the case of *Ravindra Anandrao More Vs. The State of Maharashtra*¹, to reach a conclusion that *prima facie* in such circumstances the aforesaid offence may not be attracted.

8. This Court finds substance in the contention raised on behalf of the applicant and therefore, a *prima facie* case is made out in favour of the applicant, insofar as offence under Section 123 of the BNS is concerned.

9. That leaves only offence under Section 65(c) of the Maharashtra

1 2015 SCC OnLine Bom 8149

Prohibition Act, which provides for imprisonment for between 3 years to 5 years. The applicant is a woman and she is ready to cooperate with the investigation. It is to be noted that her presence at the spot of the incident is claimed on the basis of a statement made by the police personnel, which is also a factor to be taken consideration. The applicant has undertaken to cooperate with the investigation and therefore, this Court is inclined to allow the application.

10. 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.1132 of 2024 dated 17th November, 2024, registered at Police Station Yawat, District Pune (Rural), she shall be released on bail, on furnishing PR Bond 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 on 16th December, 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.
- (D) The applicant shall not tamper with the evidence in any

manner. She shall not influence the informant, witnesses or any other persons concerned with the case.

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

12. 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.

13. The application is disposed of.

(MANISH PITALE, J.)