

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

ANTICIPATORY BAIL APPLICATION NO. 3428 OF 2024

Sureshkumar Pemaram Bhati

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Ganesh Gupta (Through V.C.) a/w Mr. Sahil Ghorpade, Mr. Madan Khansole and Mr. Surya P. Gupta i/b G.G. Legal Associates, for Applicant.
- Mr. Kiran C. Shinde, APP for Respondent.
- Mr. Anil L. Survase, API, Khadak Police Station, present.

CORAM : MANISH PITALE, J.

DATE : 17th DECEMBER, 2024.

P. C. :

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

2. The applicant is apprehending arrest in connection with First Information Report No.0255 of 2024, dated 30th July, 2024, registered at Police Station Khadak, District Pune, for offences under Sections 223, 274, 275, 123 and 3(1) of the Bharatiya Nyaya Sanhita, 2023 (BNS) and Sections 30(2)(a), 26(2)(i), 26(2) (iv), 3, 2, 4 and 59 read with 3(I)(ZZ) of Food Safety Act, 2006.

3. The allegation against the applicant is that he alongwith co-accused person was dealing with *Gutka/Pan Masala*, which is a banned substance in the State of Maharashtra.

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4. In such cases where offence under Section 123 of BNS (Section 328 of the Indian Penal Code, 1860 [IPC]) have been registered against the accused persons for similar/identical allegations, this Court has been granting relief of anticipatory bail, for the reason that the question of the very applicability of the said offence in such circumstances is pending consideration before the Supreme Court in a group of matters. The Supreme Court has granted protection from arrest to such accused persons and this Court has also granted relief in a number of such applications. It is still a matter of serious doubt as to whether in such facts and circumstances where the accused persons are alleged to have dealt with banned substance *Gutka*, offence under Section 123 of BNS (Section 328 of the IPC), can at all be registered.

5. The applicant has undertaken to cooperate with the investigation. Therefore, this Court is inclined to allow the application.

6. 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 No.0255 of 2024, dated 30th July, 2024, registered at Police Station Khadak, District Pune, on furnishing PR Bond of ₹ 50,000/- 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 19th 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. He shall not influence the informant, witnesses or any other persons concerned with the case.

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

8. 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.

9. The application is disposed of.

(MANISH PITALE, J.)