



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 110 OF 2024

Mohammed Shahanawaz Abdul Kalam Sheikh

..VS..

The State of Maharashtra through P.S.O., Police Station, Pulgaon, Dist. Wardha

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Arjun Raoka, Advocate for applicant.
Ms. Swati Kolhe, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : MARCH 08, 2024

By this application, the applicant is seeking pre-arrest bail in connection with Crime No.647/2023 registered with police station Pulgaon, District Wardha for the offence punishable under Sections 188, 272, 273 and 328 of the Indian Penal Code read with Sections 26(1), 26(2) (iv), 27(3)(e), 30(2)(a), 3(1)(zz)(iv) and 59 of the Food Safety and Standards Act, 2006.

2. The applicant is apprehending arrest at the hands of police as crime is registered on the basis of report lodged by Prashant Shivraj Lohar, Food and Safety Officer, Wardha alleging that he received a communication from the Local Crime Branch dated 04/08/2023 informing that the co-accused Prem Ahuja is dealing with contraband articles i.e. scented nuts, scented tobacco which is prohibited in the State of Maharashtra. Accordingly, he conducted the raid and contraband

articles worth of Rs.15,01,894/- along with the vehicles was seized. During the interrogation with the co-accused, the name of the present applicant is revealed.

3. Learned Counsel for the applicant submitted that in fact, the name of the present applicant is not mentioned in the FIR. The co-accused is arrested from whom the contraband articles are seized. The co-accused Fiyaz was arrested and on the basis of his statement, the present applicant is implicated in the alleged offence. As far as the recovery of the contraband articles are concerned, which is not from the present applicant. In view of that custodial interrogation of the present applicant is not required and, therefore, the interim protection granted to him deserves to be confirmed.

4. In support of contention, learned Counsel for the applicant placed reliance on ***Criminal Appeal No. 472 of 2012 (Ram Nath Vs. The State of Uttar Pradesh and Ors.)*** and submitted that the Hon'ble Apex Court dealt with Clause (zz) of Section 3 of the Food Safety and Standards Act, which defines the unsafe food. He further submitted that after dealing with the various provisions, the Hon'ble Apex Court held that there are very exhaustive provisions made in the Food Safety and Standards Act dealing with all aspects of food and food safety. Any person whether by himself or by any other persons on his behalf manufactures or stores or sales or imports unsafe food for human consumption becomes guilty of an offence dealing

with unsafe food. The Hon'ble Apex Court also dealt with Section 272 and 273 of the Indian Penal Code and the criminal appeals are dismissed. He submitted that in view of the observations of the Hon'ble Apex Court, no case is made out against the present applicant and, therefore, he be released on anticipatory bail.

5. Learned APP strongly opposed the said application on the ground that during investigation, it reveals that there is constant communication between the present applicant and other co-accused and name of the present applicant revealed during the investigation on the basis of interrogation with the co-accused. The huge contraband articles are seized at the instance of the co-accused. The co-accused who approached to the Hon'ble Apex Court, the Apex Court had not considered their bail applications and refuse to entertain the Special Leave Petition and time was granted to surrender and apply for regular bail. In view of that, the present application also deserves to be rejected. She has produced on record the order passed by this Court in Criminal Application (ABA) Nos.604, 609 and 612 of 2023 which are filed by the co-accused. She submitted that considering that this Court has rejected the applications of the co-accused and the Hon'ble Apex Court has also refused to entertain the Special Leave Petition, the present application deserves to be rejected.

6. Having heard learned Counsel for the applicant and learned APP for the State. Admittedly, the contraband articles are not recovered from the possession of the present applicant, however, the connection of the present applicant reveals from the investigation papers from the communication between them on the basis of CDR report. The CDR report shows that there was constant communication between them and the transcription of the said communication also shows that the communication was in respect of the contraband articles, which connected the present applicant with the co-accused and, therefore his custodial interrogation is required.

7. Considering the nature of the offence and the previous criminal antecedents which are registered against the present applicant, it is apparent that the present applicant is connected with the alleged offence. In view of that no case is made out to use the discretion in favour of the present applicant by granting him protection from arrest. Accordingly, the application deserves to be rejected.

8. In view of that, the Criminal Application is rejected.

(URMILA JOSHI-PHALKE, J.)