



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

957 ANTICIPATORY BAIL APPLICATION NO. 1693 OF 2024

SHAIKH AFNANA SHAIKH MUKKAM ALI

VERSUS

THE STATE OF MAHARASHTRA

Advocate for Applicant : Mr. M.B. Borse h/f. Mr. S.V. Bhopi
APP for Respondent/State : Mr. S.N. Kendre

CORAM : ARUN R. PEDNEKER, J.

DATE : 04.12.2024

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 Crime No. 321/2024 dated 31.8.2024 registered with Bhokar Police Station, District Nanded for the offences punishable under sections 123, 274, 275, 223 of B.N.S., 2023 and 26(2), 27, 23, 30(2)(a), 59(iv) of Food Safety and Standards Act.

3] This Court by order dated 8.10.2024 has granted interim protection to the applicant. This Court has already taken a view that tobacco products and Gutkha would not come within section 123 of B.N.S by order dated 14.11.2024 passed in ABA No.1670 of 2024. At para no. 3 this Court has observed as under :

"3] Considering the judgment of this Court in the case of Gaurav Jayantbhai Hapani Vs. The State of Maharashtra in Anticipatory Bail Application No.3406 of 2022, decided on 19.01.2023 and also the order passed by the Hon'ble Supreme Court in the case of Eknath Bhalchandra Patil Vs. The State of Maharashtra in Petition (s) for Special Leave to Appeal (Cri.) No. 8698/2023, decided on 28.07.2023, wherein in identical fact situation, the Hon'ble Supreme Court so also this Court in the above noted judgments has observed that applicability of Section 328 of Indian Penal Code [123 of the

Bhartiya Nyaya Sanhita] is doubted in the case of seizure of tobacco and tobacco products including Gutkha and anticipatory bail has been granted. In the instant case also, except Section 123 of the Bhartiya Nyaya Sanhita, all other offences are bailable and the same is not disputed by the learned APP and the matter pertains to seizure of tobacco and tobacco products including Gutkha."

4] The law stated in the aforesaid order would also apply to the instant case. It is informed that except Section 123 of the Bhartiya Nyaya Sanhita, all other offences are bailable.

5] In view of the above, the application is allowed and the interim protection granted on 8.10.2024 is confirmed on the following terms :

i] The applicant shall attend the concerned Police Station as and when called by the Investigating Officer.

ii] 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.

iii] 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.

[ARUN R. PEDNEKER, J.]

SSC/