

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

ANTICIPATORY BAIL APPLICATION NO.681 OF 2025

Madan Krishnaji Vaze & Anr ...Applicants
Versus
State of Maharashtra & Anr ...Respondents

M. A. Manav (Video Conference) i/b. Vaibhav R. Gargade, Advocate for the Applicants.

Mr. Anand S. Shalgaonkar, APP for the State.

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 23 APRIL 2025

PRONOUNCED ON : 5 MAY 2025

ORDER:

1. This anticipatory bail application is for pre-arrest bail in connection with C.R. No.0053/2025 registered with Malshiras Police Station for the offences punishable under Sections 223, 274, 275, 123 of the BNS Act, 2023.
2. On the basis of the complaint an F.I.R. has been lodged the role of the present Applicant has been specifically mentioned in the F.I.R.
3. The case of the applicant is that he is selling "Vimal Pan Masala" and not Gutkha; therefore, no case is made out against the present applicant. The applicant is not the owner of the shop where, according to the prosecution, the Pan Masala was found.

Accused No. 4 has already been released on bail by the Sessions Court. The goods have already been seized by the investigating officer; therefore, the custody of the present applicant is not necessary. As per the directions given by the Hon'ble Supreme Court, Section 123 of the BNS Act, 2023 is not applicable. The applicant does not have any criminal antecedents, and thus, his custody is not required.

4. The learned APP submits that the applicant has been apprehended for selling contraband goods and that the investigation is still in progress. The applicant has not disclosed from whom he purchased the goods, and therefore, his custody is necessary for further investigation.

5. In the present proceeding only the offences punishable under Section 123, 274, 275 of BNS, 2023 are invoked. The State of Maharashtra through its Food Safety Commissioner, issued Notification dated 12 July 2024 prohibiting in public interest, the manufacture, storage, distribution or sale of tobacco, gutka, pan masala etc. The notification considered the extremely harmful effects of Gutka, Pan Masala, etc. of various scientific reports, articles and opinion of Tata Memorial Hospital, Government Dental College, Mumbai and Nagpur, Dr. James E. Hamner Report. Paragraph nos.5, 6 and 10 of the

Notification, reads as under :-

“5. After going through various scientific reports and opinions, it was noticed that Gutka, Pan Masala, Flavoured / Scented Tobacco, Manufactured Chewing Tobacco, Flavoured/Scented Supari, Kharra and similar products containing either tobacco or areca nut (beetelnut), by whatsoever name called, cause immense damage to the health of consumers and their adverse impact could also lead to alterations of the genetic make-up of future generations;

6. Overwhelming scientific evidence shows that food products which have tobacco and/or areca nut (beetelnut) as their basic ingredient, whether or not containing the said additives, and whether going by the name of Gutka, Pan Masala, Flavoured/Scented Supari, Flavoured/Scented Tobacco, Chewing tobacco, Jarda, Khaini, Kharra, or by any other name, have extremely deleterious effects on human health and well-being with consequential impact on society as well;

10. The harmful effects of tobacco, areca nut (beetelnut), and several of the said additives, often found in the form of Gutka and Pan Masala, include Acute Hyper magnesias, cardiac arrest, oral sub mucous fibrosis, oral cancer, Leukoplakia, Esophageal cancer, Stomach cancer, Metabolic abnormalities, reproductive health, Gastro intestinal and respiratory diseases. And whereas the following scientific reports, articles and opinions demonstrate the extremely harmful effects of such foods”

6. In the present proceedings, there is no dispute that the Pan Masala packets were found in the shop of the present applicant. The present applicant has been apprehended by the police for selling contraband goods, and the investigation is ongoing. It needs to be ascertained from whom the applicant procured these banned goods. The applicant has not cooperated with the police and has been absconding since the lodging of the FIR. During the course of arguments on behalf of the applicant, a photocopy of the packet of Vimal Pan Masala was tendered. For ease of reference, the said photocopy of the packet of Vimal Pan Masala is scanned and reproduced herein below:



7. While the matter was argued photocopy of packet of Vimal Pan Masala, was submitted before me the photo copy ended with ‘chewing of’, and below portion was not produced. As this Court insisted upon the complete photo copy of the front portion be tendered, only then the complete photo copy of packet was tendered in the course of the day. From the complete photocopy of

the outer packet of Vimal Pan Masala it clearly appears to have been stated that “Chewing of Pan Masala is Injurious to Health”. If at all the consumption of Vimal Pan Masala, was safe, there was no need to add a line “Chewing of Pan Masala is injurious to health”. This itself shows that the ingredients of Vimal Pan Masala are not safe for human consumption. Such a tag line is also found on “Gutkha” packets.

8. The learned Single Judge of this Court (Coram : Sarang V. Kotwal, J.) in Anticipatory Bail Application No. 207 of 2024 has held that the banned food articles are liable to be confiscated and there is a deep rooted conspiracy and once the FIR is disclosing the names of the persons, the investigation will be necessary. Paragraphs 24 and 25 of the said order read as under:-

“24. Section 328 of IPC is non-bailable, section 511 of IPC in the context of section 328 of IPC is also non-bailable. The banned food articles are liable to be confiscated by the State. Yet they were being misappropriated by selling them. As submitted by the learned Advocate General, the source of these goods, whether it is a stolen property, who is the receiver of stolen property is being investigated. There is angle of deep rooted conspiracy as well. All these offences, though not specifically mentioned in the proforma of the FIR; are seen from the facts of the present case. This needs immediate investigation as submitted by the learned Advocate General.

25. Considering the above discussion, it is quite clear that the investigation into this offence needs to be carried out with utmost seriousness and sincerity. In the present case, therefore the custodial interrogation of the Applicant is absolutely necessary.”

9. The findings recorded in the above order passed in Anticipatory

Bail Application No. 207 of 2024 by the learned Single Judge of this Court will clearly apply to the present proceedings.

10. So also, recently, the learned Single Judge of this Court (Coram : R. N. Laddha, J.) in ***Anticipatory Bail Application No. 1967 of 2024*** has held that the Gukta business is an organized crime against society with inter-State implications, involving violations of Central Excise and Income-Tax laws. Paragraph nos. 6 and 7 of the said order reads as under :-

6. Upon perusing the records, it appears that the applicant holds the license for the shop in question. The leave and license agreement expressly prohibits storing any banned items on the premises. *Prima facie*, there is substantial material implicating the applicant in the crime. Moreover, the applicant has criminal antecedents, including two prior incidents of a similar nature. The underground gutka business is an organised crime against society with inter-State implications, involving violations of Central Excise and Income-tax laws. It is imperative to curb such criminal activity, necessitating a thorough investigation with utmost seriousness into the illegal manufacturing, supply, distribution, and sale of these prohibited items.

7. It is a settled position in law that the power to grant anticipatory bail is extraordinary. While it has been acknowledged in many instances that regular bail is considered a general rule, the same analogy cannot be applied to anticipatory bail. The decision to grant anticipatory bail must be exercised with careful and prudent discretion by the Court, considering each case's specific circumstances. A straight jacket formula cannot be applied. While exercising this power, the Court must exercise caution, as granting protection in serious cases could potentially lead to a miscarriage of justice or hinder the investigation by allowing tampering or destruction of

evidence. A profitable reference in this regard can be made to the decision of the Hon'ble Supreme Court in *Shrikant Upadhyay & Ors. Vs State of Bihar & Anr. 2024 SCC OnLine SC 282*.

(Emphasis supplied)

11. In the present proceedings, when the police conducted the raid in the shop of the present applicant, the Vimal Pan Masala in bulk quantity were found. The applicant has not disclosed from whom he has purchased the said Pan Masala packets. There is an angle of deep rooted conspiracy. Section 123 of the Bharatiya Nyaya Sanhita, 2023 is non-bailable. According to me, no case is made out to grant pre-arrest bail to the applicant. For the purpose of investigation, interrogation of the applicant is necessary.

12. In view of the same, **the present anticipatory bail application stands rejected and disposed of accordingly.**

(RAJESH S. PATIL, J.)