

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.349 OF 2024**

Ayub Khalid Khatri & Anr.	...Applicants
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr. Rizwan Merchant a/w. Mr. Mohammed Adnan M. Shemle, for the Applicants.
Ms. R. V. Newton, APP, for the Respondent-State.
Mr. N. V. Nikhal, Police Constable-843, attached to Igatpuri Police Station, Nashik, present.

**CORAM: MADHAV J. JAMDAR, J.
DATED : 16th DECEMBER 2025**

PC:-

1. Heard Mr. Merchant, learned Counsel appearing for the Applicants and Ms. Newton, learned APP appearing for the Respondent-State.

2. This application is filed under Section 438 of the Code of Criminal Procedure, 1973 seeking pre-arrest bail in connection with C.R. No.112 of 2023 registered with Igatpuri Police Station, District-Nashik, for the offences punishable under Sections 328, 272, 273, 420, 188, 465, 468, 471 read with 34 of the Indian Penal Code, 1860 (“**IPC**”) and under Sections 26(2)(i), 26(2) (ii), 26(2) (iv), 27(3) (e), 30(2)(a) and 59 of the Food Safety and Standards Act, 2006

3. As per the prosecution case, the Applicants were dealing with Gutkha which is unsafe and dangerous for the health of people.

4. It is the submission of Mr. Merchant, learned Counsel appearing for the Applicants that except the offence under Section 328 of the IPC, all other offences are bailable offences. He submits that as far as Section 328 of the IPC is concerned, the Supreme Court is considering the applicability of Section 328 of IPC to the similar cases. He therefore, submits that the pre-arrest bail be granted to the Applicants.

5. On the other hand, Ms. Newton, learned APP strongly opposes the Anticipatory Bail Application. She submits that the offence is very serious. She submits that there are about 9 antecedents against the Applicants and the Applicants are absconding and therefore, the Anticipatory Bail Application be rejected.

6. Mr. Merchant, learned Counsel submits that in fact, the Applicants have attended the Police Station on 24th March 2024 pursuant to the order dated 8th March 2024 passed by a learned Single Judge. He therefore, submits that the submission that the Applicants are absconding is incorrect.

7. Ms. Newton, learned APP submits that if this Court is inclined to grant Anticipatory Bail then the Applicants be directed to give undertaking in terms of order of the Supreme Court in the case of *Abhijit Jitendra Lolage vs. State of Maharashtra*¹ and more particularly relies on following condition imposed by the Supreme Court in case of similar offences :

*“It is deemed appropriate to impose the condition – “I, Abhijeet Jitendra Lolage do undertake to **not deal with Gutkha, that is, Pan Masala with Tobacco**”. In case, the appellant – Abhijeet Jitendra Lolage violates the terms and conditions of bail, including the undertaking imposed, it would be open to the prosecution to seek cancellation of bail ”.*

(Emphasis added)

8. Mr. Merchant, learned Counsel appearing for the Applicants, on instructions, submits that the Applicants will give the undertakings in above terms.

9. The Supreme Court in the said order has imposed the above condition in case of similar offence.

10. Perusal of the record shows that except the offence under Section 328 of the IPC, the other offences are bailable offences. The

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issue whether Section 328 of the IPC will apply to similar cases is pending before the Supreme Court. As the Applicants are ready to give the undertaking that they will not deal with Gutkha and Tobacco products in any manner whatsoever, the case is made out for grant of Anticipatory Bail.

11. Accordingly, the case is made out for grant of Anticipatory Bail by imposing certain conditions. In view thereof, the following order is passed:

ORDER

- (a) In the event of arrest of the Applicant No.1-Ayub Khalid Khatri and the Applicant No.2-Yahya Khalid Khatri in connection with C.R. No.112 of 2023 registered with the Igatpuri Police Station, District-Nashik, the Applicants are directed to be released on bail on their furnishing P.R. Bond in the sum of Rs.1,00,000/- each with one or two solvent sureties each in the like amount.
- (b) The Applicants shall attend the Igatpuri Police Station, District- Nashik once in a month till filing of the charge-sheet and shall co-operate with the investigation.

- (c) Each of the Applicants to furnish separate undertakings to the effect that they will not deal with banned products i.e. Gutkha, Pan Masala with Tobacco products in any manner whatsoever. Such undertakings are to be filed in this Court within a period of two weeks from today. The Applicants to strictly comply with the said undertakings.
- (d) The Applicants shall furnish their cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (e) The Applicants shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.
- (f) The Applicants shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (g) The Applicants shall not leave India without prior permission of the Court.
- (h) In case, the Applicants violate the terms and conditions

of bail, including the undertaking, it would be open to the prosecution to seek cancellation of bail.

12. The Anticipatory Bail Application is disposed of accordingly.

[MADHAV J. JAMDAR, J.]

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