



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

ANTICIPATORY BAIL APPLICATION NO. 1389 OF 2024

GULSHAN KUMAR SHARMA & ORS. ..APPLICANTS

VS.

STATE OF MAHARASHTRA ..RESPONDENT

Adv. Kainat Shaikh a/w. Adv. Bushra Shaikh for the applicants.

Mr. Ajay S. Patil, APP for the State.

CORAM : RAJESH S. PATIL, J.

DATE : JANUARY 30, 2025.

P.C. :

- 1.** The learned counsel for the applicant submits as regards applicant no.2 – Om Gulshan Sharma that applicant no.2 had not approached the Sessions Court and had directly come to this Court. Therefore, she desires to delete the name of applicant no.2.
- 2.** In view of the above, the name of applicant no.2 – Om Gulshan Sharma be deleted from the present proceedings. Amendment to be carried out forthwith.
- 3.** This application is filed under Section 438 of the Code of

Criminal Procedure for seeking anticipatory bail in connection with the First Information Report (FIR) No.902/2024 dated 4th April, 2024 registered with Narpoli Police Station for the offence punishable under Sections 328, 272, 273 of the Indian Penal Code and Section 26(2), 27, 23, 26(2)(iv), 30(2)(a), 59 of the Food Safety and Standards Act, 2006.

4. It is the case of the prosecution that the present applicants are the owners of the transport company. It is further submitted in the FIR that on 4/4/2022, a container bearing No.HR-55/WO-326 was intercepted and banned goods like gutkha, scented tobacco etc., was seized valuing around Rs.50 lakhs. The driver of the said container revealed that the owner of the vehicle is one Ritika Illahabadi and 'Gulshan Roadways' owned by applicant no.1 is the transport company who organized to deliver the banned goods and the person who was supposed to receive the goods his mobile number is 9892248202 and he was not aware about the name and address of the said person. The police officer, accordingly has filed the FIR for the offence punishable under Sections 328, 272, 273 of the Indian Penal Code and Section 26(2), 27, 23, 26(2)(iv), 30(2)(a), 59 of the Food Safety and Standards Act, 2006.

5. Ms. Kainat Shaikh, the learned counsel appearing for the applicants, submits that the driver of the container has been arrested and released on bail by the trial court. She further submits that no role has been attributed to the present applicants. They are in the transport business and, therefore, should not be held liable, as they are neither the owners of the subject vehicle nor the owners of the banned goods being transported. She further submitted that the applicants' services are solely for delivering certain goods, which were successfully carried by the subject vehicle. However, the banned goods that the driver managed to transport on the return journey were without their knowledge. She also submitted that since the goods have already been seized, there is no question of any further recovery. The applicants have already attended the police station and furnished all the necessary documents. She also submitted that there is an order from the learned Single Judge of this Court in Anticipatory Bail Application No. 1688 of 2024, which supports the contention in the present case. Therefore, she prayed that the present application be allowed.

6. The learned APP for the State submitted that the present applicants are not cooperating with the investigation and have not revealed who are the owners of the banned goods, which have been

seized. He submitted that it is necessary to note that, since the applicants are not cooperating and have still not revealed who is the owners of the goods, or to whom the banned goods were to be delivered. Hence, according to him, the investigation cannot proceed further despite the best efforts of the I.O. He submitted that the learned Single Judge of this Court, in the order passed in Anticipatory Bail Application No. 207 of 2024, rejected the anticipatory bail application in a similar situation. He submitted that hence the present application deserves to be dismissed in order to further investigate to find out trail of the event.

7. I have gone through the FIR and the statement of the driver who has specifically revealed the names of the applicants. Though the police has given the opportunity to the applicants to reveal the details of the owner of the said goods and to whom the said goods were delivered, they are not at all cooperating. The learned Single Judge of this Court (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.”

8. The findings recorded in the above order will clearly apply to the present proceedings. Regarding the order referred by the applicant in Anticipatory Bail Application No. 1688 of 2024, it is mentioned in paragraph 7 of the said order that the Court formed a *prima facie* view while deciding the application. The order further records that the applicants in the said application were not named in the FIR. However, in the present proceedings, the applicants' names have been revealed by the driver, whose statement has been recorded by the police. Therefore, the said order passed in Anticipatory Bail Application No. 1688 of 2024 will not be attracted to the present case. According to me, no case is made out to grant anticipatory bail to the applicants.

9. In view of the above, the anticipatory bail application is **rejected** and disposed off accordingly.

(RAJESH S. PATIL, J.)