

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

ANTICIPATORY BAIL APPLICATION NO. 311 OF 2025

Narayan Ranjak Dhokale	...Applicant
V/s	
The State of Maharashtra	...Respondent

...

Adv. Eknath Dhokale for the Applicant
Adv. Nitin B. Patil, APP for the State.
Mr. Amod Vasant Bhadage, Sub Inspector of State Excise Satana
Flaying Squad No.2, Nashik.

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CORAM : RAJESH S. PATIL, J.

DATED : 4th FEBRUARY, 2025

P.C.:

1. The Applicant has filed the present Application under Section 482 of the Bhartiya Nagarik Suraksha Sanhita 2023 for the offences punishable under Section 65(a)(b)(d)(e)(f), 80, 81, 83, and 90 of the Maharashtra Prohibition Act, 1949 and Section 123 of the Bhartiya Nyaya Sahita 2023.

2. Till now, the Applicant has visited the Police Station for recording his statement.

3. It is the case of the prosecution that in fact the

Applicant is the main person who finances the illegal business of liquor. There are statements recorded by the police authority of the witnesses whereby they have also clearly mentioned the name of the present Applicant. The case of the prosecution is that large amount of liquor is being supplied by the accused persons. It has been submitted that while the spot was raided, the team arrested the Accused Nos. 1 and 2. During the custodial interrogation, the name of the present Applicant was revealed that he is providing finance to the various illegal activities.

4. Mr. Dhokale, learned counsel for the Applicant made submission as regards the applicability of Section 123 of Bhartiya Nagarik Suraksha Sanhita 2023. (analogous to Section 328 of the Indian Penal Code).

5. The learned counsel for the Applicant relied upon the following judgments/orders.

1. Joseph Kurien Philip Jose v. State of Kerala¹
2. Krishna Kant v. State²
3. Kiran s/o. Balu Gavhane & Anr. v. The State of Maharashtra³
4. Bhimrao s/o. Faula Rathod v. The State of Maharashtra⁴
5. Niraj s/o Jagdish Choudhari v. The State Excise Department⁵

1. [(1994) SUPP4 S.C.R.].

2. [Cri. Appeal No.275/2009 Delhi High Court].

3. [ABA/515/2020 Bombay High Court Bench at Aurangabad].

4. [ABA/553/2020 Bombay High Court Bench at Aurangabad].

5. [ABA/201/2023 Bombay High Court Bench at Aurangabad].

6. Lochanbai Dhalaji Gire & Anr. v. The State of Maharashtra⁶
7. Amit s/o Laxman Gotpartiwar v. The State of Maharashtra⁷

6. Mr. Patil, learned APP has opposed the present Anticipatory Bail Application. He submitted that the Applicant is the financier of illegal business of liquor. Hence, the Anticipatory Bail Application requires to be rejected.

7. The Supreme Court in *Joseph Kurien* (supra) held as under:

“In order to prove offence under section 328 the prosecution is required to prove that the substance in question was a poison, or any stupefying, intoxicating or unwholesome drug etc, that the accused administered the substance to the complainant or cause the complainant to take such substance, that he did so with intent to cause hurt or knowing it to be likely that he would thereby cause hurt, or with the intention to commit or facilitate the commission of an offence.”

In *Joseph Kurien* (supra), the matter had come to Supreme Court against a conviction verdict. It was not a matter pertaining to anticipatory bail application. The Supreme Court maintained conviction against Appellant No. 1 and acquitted Appellant No.2.

8. In *Krishna Kant* (supra), decided by a Single Judge at Delhi High Court, the facts were that the Appellant was accused of mixing a car driver's juice with an intoxicant to steal his vehicle in 1998. The Trial Court convicted him, but the Delhi High Court

6. [ABA/166/2021 Bombay High Court Bench at Aurangabad].

7. [ABA/209/2024 Bombay High Court Bench at Nagpur].

overturned this decision due to insufficient evidence.

9. In *Kiran Gavhane* (supra), a Single Judge of this Court Bench at Aurangabad held that in the absence of any allegation about the applicants and the co-accused having administered any poisonous substance to anybody, *prima facie*, the provisions of Section 328 of the IPC are not attracted.

10. In *Bhimrao Rathod* (supra), a Single Judge of this Court Bench at Aurangabad held that when there is doubt as to whether Section 328 of the IPC would be attracted or not and as regards the other offences are concerned, physical custody of the applicant is not required.

11. In *Niraj Choudhari* (supra), a Single Judge of this Court Bench at Aurangabad held that samples sent to sugar factory-result-label and other material on bottles are fake & intensity of liquor found-30.80° up but as per standard, it should be 25° up. No concrete evidence to *prima facie* conclude that the substance seized was liquor. Therefore, custodial interrogation not required.

12. In *Lochanbai Gire* (supra), a Single Judge of this Court Bench at Aurangabad held that Prosecution's failure to produce a chemical report providing the liquor's harmful nature. Without this

evidence, the court found no basis to comply Section 328 of the IPC, which requires proof of intent to administer poison. Lack of corroborative scientific data weakened the case for custodial detention.

13. In *Amit Gotpartiwar* (supra), a Single Judge of this Court Bench at Nagpure held that the applicant co-operate with the investigators during interim protection period and due to absence of evidence taking him directly to recovered contraband, the custodial interrogation was unnecessary.

14. Mr. Patil, learned APP relied upon the order passed by a Single Judge of this Court in the case of *Imran Tamboli v. State of Maharashtra* [ABA/1034/2024]. I am in agreement with the findings recorded in the order passed by the Single Judge of this Court in *Imran Tamboli* (supra), in paragraph No. 8 relying upon the Hon'ble Supreme Court's judgment in *State of Haryana v. Samarth Kumar* [2022 SCC Online SC 2087] that the accused seeking pre-arrest bail on the basis of disclosure statement of the main accused. And no recovery from him, in such cases it was held that this issue can be argued at the time of regular bail application or at the time of final hearing after conduction of the trial. Paragraph 8 of the said judgment read as under:

“8. I have considered these submissions. The Hon'ble Supreme Court in the case of State of Haryana Vs. Samarth Kumar, in Criminal Appeal No.1005 of 2022 decided on 20/07/2022 (2022 SCC OnLine SC 2087) had considered similar situation under NDPS Act. In that case, it was argued that the accused who had made an application for pre-arrest bail was sought to be arrested only on the basis of disclosure statement of the main accused. There was no recovery from him. The Hon'ble Supreme Court had held that in such cases those accused could raise this issue at the time of arguing regular bail application or at the time of final hearing after conclusion of the trial. It was observed that to grant anticipatory bail in a case of such nature was not warranted. The order granting anticipatory bail passed by the High Court was set aside.”

15. The Role of the Applicant is that he is a financier who has been providing finance to Accused Nos. 2 and 3. The illicit trade of liquor poses a grave threat to public health and Social well-being.

16. The allegations in the present case pertains to sell of liquor, an offence that not only violates statutory provisions but also endangers public safety. Considering the seriousness of the offence and its potential ramifications, the grant of anticipatory bail at this stage would hinder a fair and thorough investigation.

17. Considering the gravity and manner of the offence, I am not inclined to grant any kind of protection to the Applicant. Hence, Anticipatory Bail Application is rejected.

(RAJESH S. PATIL, J.)