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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 693 OF 2025

GOVINDKUMAR RAMMANOHAR NISHAD APPLICANT

VERSUS

STATE OF MAHARASHTRA

..... RESPONDENT

Adv. Tushar Sonawane a/w. Adv. Khan Tauseef AHD Hisamuddin for the Applicant.

Mr. Anand S. Shalgaonkar A.P.P. for the State.

Mr. P. G. Ghagare, Asst. P.I., Khandeshwar Police Station present.

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 7th MAY, 2025

PRONOUNCED ON : 9th JUNE, 2025

ORDER :-

This application is filed for pre-arrest bail under Section 482 of the Bharatiya Nagrik Suraksha Sanhita, 2023, in connection with Crime No. 0025/2025 dated 23rd January, 2025 registered with Khandeshwar Police Station, Navi Mumbai for the offences punishable under Sections 123, 223, 274, 275 and 3(5) of the Bharatiya Nyaya Sanhita, 2023 and Sections 26 (1), 26(2)(ii), 26(2) (iv), 27(3)(d), 27(3) (e), 30(2)(a) and 59 of Food Safety & Standards Act, 2006.

2. Based on the complaint, an FIR has been lodged. The role of the

present applicants is mentioned in the said FIR.

3. The present applicant is arraigned as accused no.5 in the FIR. There are total ten accused persons arraigned, out of which the one of the accused has already been arrested, who has named the present applicant as the seller of the banned products. The learned A.P.P. submitted that it has to be investigated from whom the banned products were procured by the accused no.1. The police needs to investigate to whom the said banned products were to be supplied by the present applicant. Hence, for the purpose of completing the investigation, the interrogation of the present applicant will be necessary.

4. 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 State in the notification appraised the extremely harmful effects of Gutka, Pan Masala, etc. based on 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 magnesia, 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”

[Emphasis supplied]

5. 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.”

[Emphasis supplied]

6. 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)

7. The findings recorded in the above order passed in Anticipatory Bail Application No. 207 of 2024 and Anticipatory Bail Application No. 1967 of 2024 by the learned Single Judge of this Court in my view will clearly apply to the present proceedings. I am in agreement with the opinion expressed by both the learned Judges of this Court. The notification issued by the State of Maharashtra, discussed in earlier paragraph, is in public interest. The said notification was in force when the offence was committed, and is in force as of today. The distribution of the banned products is prohibited, therefore *prima facie* the offence as enumerated in FIR are made out.

8. On behalf of the applicant, the order passed by a Bench of this Court in **Anand Ramdhani Chaurasia & Anr. vs. The State of Maharashtra & Ors. in Criminal Writ Petition No. 3607 of 2019**, is relied upon. The applicants in the said proceedings were arrested on

2nd March, 2019 and were released on bail on 5th March, 2019. Thereafter, the applicants filed writ petition for quashing of proceedings. The Bench of this Court held that Section 188 of the Indian Penal Code does not use the word “likely to cause”. It is further held that, mere possession or storage cannot fall within the purview of danger as contemplated under the said Section. Resultantly, the FIR was quashed to the extent if registered offences punishable under Sections 328 and 188 of the Indian Penal Code, and respondents were restrained from initiating any action under the aforesaid provisions of the Indian Penal Code. The State of Maharashtra, filed a Special Leave Petition, challenging this order. As of date, the hearing on the said Special Leave Petition is ongoing. By its order dated 31st August, 2020, the Supreme Court stayed the order passed by the Bench of this Court. Therefore, according to me the order passed by this Court will not help the applicant in the present proceedings.

8.1 Another judgment referred by the applicant, is of **Ram Nath vs. State of U.P.** reported in **(2024) 3 SCC 502**. In the said proceeding, the applicant had filed petition for quashing FIR which was lodged for offences punishable under Sections 272 and 273 of the Indian Penal

Code as well as under the Foods Adulteration Act. The allegation was that though the applicant did not possess a licence to sell the commodity of mustard oil, he continued to carry on the business of selling. So also, it was alleged that the applicant had adulterated the mustard oil, edible oil and rice bran oil. The Supreme Court quashed the FIR holding that Food Safety Act, 2006 had an overriding effect on proceedings of Indian Penal Code, granting further liberty to the authorities to initiate appropriate proceedings in accordance with the law. However, the present proceedings pertain to “Gutka” and other banned substances. The FIR is lodged under the newly enacted BNS Act, 2023 and Food Safety Act, 2006. Therefore, there is vast difference between the present proceedings and the proceedings in the **Ram Nath** case (supra).

9. In the present proceedings, the police after raiding the suspected premises on 23rd January, 2025 found prohibited goods worth Rs.29,11,215/-. The applicant is arraigned as seller of the said prohibited goods. The applicant has not disclosed the name of the persons to whom the said banned substances were to be sold. From 23rd January, 2025, the applicant is absconding. 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.

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

[RAJESH S. PATIL, J.]