

KANCHAN
VINOD
MAYEKAR

Digitally signed
by KANCHAN
VINOD
MAYEKAR
Date:
2025.04.18
13:29:25 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 705 OF 2025

MOHAMMAD AFTAB SABIR ANSARI APPLICANT

VERSUS

STATE OF MAHARASHTRA RESPONDENT

Mr.Asit Y. Chaware a/w. Mr.Tanveer Aziz Patel for the Applicant.

Mr.Avinash A. Naik, A.P.P for the State.

CORAM : RAJESH S. PATIL, J.

DATE : 15th APRIL, 2025

P.C. :-

This application is filed for pre-arrest bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Crime No. 140/2024 dated 27th March, 2024 registered with Turbhe MIDC Police Station, Navi Mumbai for the offence punishable under Sections 328, 272, 273, 188 of the Indian Penal Code, 1860 and Sections 26(2)(ii), 26(2)(iv), 27(2)(e), 59 of Food Safety and 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 accused no.3. Accused no.1 and accused no.2 have been granted regular bail and pre-arrest bail respectively. The present applicant had filed a pre-arrest bail application before the Sessions Court which was rejected and thereafter the second pre-arrest bail application was filed which was rejected on 17th February, 2025, after which the present pre-arrest bail application has been filed in this Court for the first time.

4. As per the FIR, the role of the applicant nos. 1 and 2 have been specifically mentioned. The name of the present applicant appears after the first remand where it has been specifically mentioned that the name of the accused no.2 and the present applicant – accused no.3 have been roped in. It has been alleged that the banned substance was to be delivered to Sujeet Pandey and the present applicant. The said Sujeet Pandey is already on bail. The custody of the present applicant is not necessary as he is ready to co-operate with the police.

5. The learned Single Judge of the ***Aurangabad Bench*** of this Court (Coram : Smt.Vibha Kankanwadi, J.) in ***Anticipatory Bail Application No. 32 of 2022 by its order dated 8th February, 2022***, has held that the applicant was not in custody was not in custody of the banned articles. His name was not appearing in the FIR. Only on the basis of the

remand report, he has been made an accused. Hence, the applicant was protected.

6. 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.”

7. 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.

8. 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*

9. In my order dated 30th January, 2025 passed in Anticipatory Bail Application No. 1389 of 2024, I have considered the law laid down by the learned Single Judge of this Court and rejected the anticipatory bail application. So also, today in Anticipatory Bail Application No. 967 of 2025, I have rejected the anticipatory bail applications considering the law laid down on this issue. There is an angle of deep rooted conspiracy.

11. Hence, according to me, there is no merit in the **present anticipatory bail application and the same stands rejected.**

[RAJESH S. PATIL, J.]