

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 914/2025

SAHBAJ KHAN @ ALI BHAI NAGPADA	...APPLICANT
VS	
STATE OF MAHARASHTRA	...RESPONDENT

...

Adv. Arif Siddiqui for the Applicant.
Adv. Rutuja A. Ambekar, APP for the Respondent State.
API Avinash Shinde, Dongri Police Station
PSI Sopan Kadam, Dongri Police Station.

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CORAM : RAJESH S. PATIL, J.
DATED : APRIL 3, 2025

P.C.:

1. The applicant prays for grant of anticipatory bail. He apprehends arrest in connection with FIR no. 65 of 2025 of Dongari Police Station for offence punishable under Sections 123, 223, 274, 275 r/w 3(5) of Bharatiya Nyaya Sanhita, 2023 and Section 59 of Food Safety and Standards Act, 2006.

2. The learned counsel for the applicant submits that the applicant's name has been cropped up only after the statement was recorded of the co-accused in the remand application. He referred two different orders passed by the Single Judge of this Court in ABA No. 864/2022 and in ABA No. 208/2022, wherein, it has been held that mere possession of Gutkha would not attract the provisions of Section

328 of the IPC and if the applicant is not the person in whose custody the banned articles are found, and only on the basis of the remand report the name of the applicant has been added, a protecting order needs to be granted. He submits that there is no antecedents reported against the present applicant. The applicant is ready to co-operate with the police. Therefore, the custody of the applicant is not necessary.

3. The learned APP submits that a Single Judge of this Court has held that when the matter is pertaining to banned products like Gutkha, the Court has to consider the effect the product will have on the entire society. It is necessary to take custodial interrogation of the present applicant as the whole chain has to be found out who are involved in the said business of selling banned products like Gutkha.

4. I have heard the counsel for both the sides. As per the prosecution case based on secret information, on checking tempo, they found banned products Gutkha in the said tempo. Two accused persons who were arrested has specifically named the persons to whom the banned products was to be supplied. One of the name mentioned by the two arrested accused is that of the present applicant. One of the accused person has also stated that they have been repeatedly delivering Gutkha to the present applicant.

5. 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.”

6. The findings recorded in the above order will clearly apply to the present proceedings.

7. As far as the two orders referred by the present applicants are concerned, they are not judgments, they are orders based on the facts of those cases where in ratio of law has not been laid down by the Single Judge's of this Court.

8. The Supreme Court in case of *Sumitha Pradeep vs. Arun*

*Kumar C.K. and another*¹ in paragraph 12 has held as under :-

“12..... In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

(Emphasis supplied)

9. A similar view has been taken by the Supreme Court in the case of *the C.B.I. vs. Anil Sharma*², in paragraph 4 which reads as under:-

“4. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that

1 2022 SCC Online SC 1529

2 AIR OnLine 1997 SC 797

responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring would not conduct themselves as offenders.”

(Emphasis supplied)

10. Taking into consideration the contents of FIR, the documents on record and considering the law laid down by the Supreme Court in above judgments, according to me, no case is made out to grant protection to the present applicant. **The anticipatory bail application stands rejected and disposed of accordingly.**

(RAJESH S. PATIL, J.)