

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

ANTICIPATORY BAIL APPLICATION NO. 1193/2025

HARISH
VITHAL
CHAUDHARI

NIKHIL SURESHSING BAGHEL
VS
STATE OF MAHARASHTRA

...APPLICANT

...RESPONDENT

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Adv. Rajesh More for the Applicant.
Adv. Anand S. Shalgaonkar, APP for the Respondent State.
API Kiran Patil Pawarwadi Police Station, Malegaon.

...

CORAM : RAJESH S. PATIL, J.

DATED : APRIL 29, 2025

P.C.:

1. The applicant/accused seeks pre-arrest bail under Section 482 Bharatiya Nagarik Suraksha Sanhita, 2023 in Crime No.6/2025 registered by Pawarwadi police station for offences punishable under Section 123, 274, 275, 223 of Bharatiya Nyaya Sanhita, 2023 and Section 158 r/w. Section 177 of Motor Vehicle Act.

2. Based on the complaint, an FIR has been lodged. The role of the present applicant is specifically mentioned in the FIR.

3. The learned counsel for the applicants submits that the applicant has no concern with the seized banned article and no concern with vehicle. He has been falsely roped into the offence. The applicant is ready to co-operate with the police. Therefore, the custody of the present applicant is not necessary.

4. 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 investigating officer has to investigate the matter to find out that to whom the banned articles were to be supplied, to which persons and who all are involved in supplying the banned articles.

5. I have heard the counsel for both the sides and have gone through the documents on record including the FIR.

6. A huge quantity of prohibited Gutkha and Tobacco articles worth of Rs.33,75,000/- was seized by the police. The driver of the truck in which the goods were carried, disclosed the name of the present applicant as a person on whose instructions he was transporting the banned articles. No invoices, transport receipts, bilty or delivery challan or e-way bill was found in the possession of accused no.1-driver. The container truck was detained and seized. It was expected from the truck driver to carry the GST tax invoices, delivery challan, transporter receipts, e-way bill etc. However, no such documents were carried by the driver to justify that the transport of such goods through state of Maharashtra to Gujrat, was legal and proper.

7. Before the Sessions Court, the earlier bail application of the applicant was withdrawn by the applicant and the second pre-arrest bail application was filed, and the same was rejected. As per the version of the present applicant the goods were to be carried from Indore to Wapi (Gujrat). In the seized truck, 40 sacks of banned articles were found. Apart from carrying the banned articles, it also appears that a large scale of **evasion of GST** was done by the applicant.

8. 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.”

9. The findings recorded in the above proceedings will clearly

apply to the present proceedings.

10. 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)

11. 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

1 2022 SCC Online SC 1529

2 AIR OnLine 1997 SC 797

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 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)

12. Taking into consideration that huge quantity of ‘Gutka’, worth of Rs.33,75,000/- has been seized by the police, there is allegation also of evasion of GST 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.)