

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

Anticipatory Bail Application No.1779 of 2025

Dipen Arvind Gala

Age 42 years, Occ. Business,

R/o. Behind Gram Panchayat Office,

Kurul, Alibag, Dist. Raigad.

... Applicant

versus

The State of Maharashtra

(Alibag Police Station)

...Respondent

Mr R V Gupta, i/b Rohit Vaishya, for the Applicant.

Mr S V Walve, APP, for Respondent / State.

PSI S H Bhundere, Alibag Police Station, Raigad, is present.

Coram: R.N. Laddha, J.

Date: 24 July 2025

P.C.:

This is an application for pre-arrest bail filed by the applicant, apprehending arrest in CR No.105 of 2025, registered at Alibaug Police Station, Raigad, for offences punishable under Sections 123 read with 3(5) of the Bharatiya Nyaya Sanhita, 2023 ('BNS'), and Sections 26(2), 26(4), 59 and 31 of the Food Safety and Standards Act, 2006 ('FSS Act').

2. The case of the prosecution is that, on 11 June 2025, pursuant to specific intelligence received, the complainant, in

discharge of his official duties and accompanied by other law enforcement personnel, proceeded to the location of the scene of occurrence and conducted a search and seizure operation at a commercial establishment operating under the name and style of 'Atharv Pan Centre'. During the course of this operation, the raiding team discovered and seized certain contraband substances, namely scented tobacco and pan masala, both of which are banned within the State of Maharashtra.

3. The person present at the premises was apprehended, and the aforementioned banned substances were duly seized and recorded under a panchnama executed in accordance with the procedural law. In the course of the investigation, it was further revealed that the co-accused had procured the contraband from the applicant. Further, six empty bags, which previously contained the prohibited substances, were recovered from the applicant's residential premises.

4. Mr RV Gupta, the learned Counsel appearing on behalf of the applicant, submits that the applicant is innocent and has been falsely implicated in the crime. The applicant has no nexus whatsoever with the subject offence. He further submits that the invocation of Section 59 of the FSS Act and other ancillary provisions, do not pertain to the offence of a grave or heinous

nature, and as such, the applicant's custodial interrogation is neither warranted nor justified. He argues that the contraband articles have already been recovered, and there remains no necessity for any further recovery or discovery from the applicant. The applicant is not named in the FIR, and there are no specific allegations of adulteration or active participation in the illegal trade directly attributable to him. Furthermore, except for the alleged offence under Section 123 of the BNS, all other offences invoked are bailable in nature. The applicant's implication is based solely on the statement of the co-accused, which, per se, is insufficient to deny anticipatory bail. The learned Counsel also submits that the applicant was not present at the time and place of the seizure of the contraband. Moreover, the applicant is ready and willing to cooperate with the investigation.

5. In support of his contentions, the learned Counsel has placed reliance on the decisions in (i) *Mohd. Ali Rehman alias Mohd. Ali Abdul Rehman Shaikh Vs. The State of Maharashtra, Special Leave to Appeal (Cri.) No(s) 8431 of 2021 dated 13.11.2021*, (ii) *Nipul Nagade Vs State of Maharashtra, Special Leave to Appeal (Cri.) No(s)6788 of 2021 dated 21.09.2021*, (iii) *Mohd. Khaja Ansari Vs The State of Maharashtra, ABA No.1979 of 2024 Bom.High Court dated*

26 July 2024; (iv) Mayur Savkar Vidhate Vs. The State of Maharashtra ABA No.977/2023 Bom HC, dated 6.09.2023.

6. On the other hand, the learned APP representing the respondent/ State has opposed the application and submits that a substantial quantity of banned items was seized from the premises of the co-accused, who, in his statement, disclosed that the contraband was procured from the present applicant. Further, six empty bags previously containing the prohibited substances were recovered from the applicant's residential premises. The learned APP further submits that the applicant is not a mere supplier but the principal architect and operative head of a clandestine network engaged in the unlawful trade of banned tobacco products. The CDRs demonstrate that the applicant had frequent telephonic contact with the co-accused during the relevant time. The learned APP emphasises that the applicant has a prior criminal record, with earlier cases of a similar nature registered against him, demonstrating a pattern of habitual offending. In light of these antecedents, the learned APP argues that the applicant poses a risk to public order and the integrity of the investigation process.

7. Moreover, the learned APP contends that apart from Section 123 of the BNS, the facts and circumstances also attract

the application of Section 62 of the BNS. The offence in question constitutes a grave threat to public health and the economy. The unlawful trade is not limited to the State but has inter-state ramifications, involving violations of the Central Excise Act, Income Tax Act, and other fiscal statutes, rendering the offence not only penal but also a complex economic crime. Reliance is placed on *Mohd. Sadiq Adam Shaikh vs. State of Maharashtra*, ABA No.207 of 2024.

8. It is a settled position in law that the power to grant anticipatory bail is an extraordinary relief and must be exercised sparingly, with due regard to the nature and gravity of the allegations, and the necessity of custodial interrogation. Unlike regular bail, it cannot be treated as a general rule. Anticipatory bail ought not to be granted in a mechanical manner, especially in cases involving serious offences and organised criminal activity, as granting such pre-arrest bail in serious cases may affect the investigation. All these aspects are highlighted in the decision of the Hon'ble Supreme Court in *Srikant Upadhyay v. State of Bihar*, 2024 SCC OnLine SC 282.

9. Upon a perusal of the case diary and the record, it appears that the present case does not rest solely on the statements of the co-accused's to implicate the applicant. Recovery of empty

bags of the prohibited substance from the applicant's premises and the CDRs showing frequent communication with the co-accused at the relevant time provide *prima facie* material linking the applicant to the crime. The applicant's antecedents, coupled with the nature and magnitude of the alleged offence, support the inference that his custodial interrogation is necessary for a fair and effective investigation, particularly in light of the suspected organised network and financial implications. The present case pertains to the illegal trade in gutka, a substance banned due to its deleterious impact on public health. The offence has ramifications that extend to the domains of fiscal and economic law, and *prima facie* involves an organised criminal enterprise.

10. Having regard to the seriousness of the allegations, the statutory prohibitions involved, and the stage of investigation, this Court is of the view that custodial interrogation of the applicant is necessary for unearthing the broader conspiracy, identifying other conspirators, and recovering further incriminating material. Accordingly, this Court is not inclined to exercise its discretion in favour of the applicant. Resultantly, the present anticipatory bail application stands rejected.

(R.N. Laddha, J.)