



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (ABA) NO.254/2025

Shaik Mohammed Ismail

..VS..

**State of Maharashtra, through PSO, Saoner Police Station, District
Nagpur**

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri S.A.Mohta, Counsel for the Applicant.

Shri M.K.Pathan, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 25/04/2025

PRONOUNCED ON : 02/05/2025

1. Apprehending the arrest at the hands of the police in connection with Crime No.290/2025 registered with the non-applicant/police station for offences under Sections 223, 274, 275, and 123 of the BNS along with Section 3(1)(zz)(iv), 26(1), 26(2)(iv), 27(3)(e), 30(2)(a), and 59 of the Food Safety and Standard Act, 2006, the applicant approached this court for grant of pre-arrest bail.

2. The accusations against the applicant are on the basis of report lodged by Food Safety Officer Rajesh Yadav. As per his report, he received an information that huge quantity of contraband i.e. Scented Supari, Tobacco, and Gutkha Pan Masala are being transported by motor vehicle bearing registration No.TS-UM/8948. At the relevant time, the Local Crime Branch Police were on patrolling duty. They found the said truck stationed and on enquiry with driver and cleaner of the said truck, it revealed that the contraband articles of 6653 kilograms worth of Rs.78,62,400/- are loaded in the said truck. The driver and cleaner were taken into custody and the stock was seized. During enquiry with the said driver and cleaner, who are co-accused, it revealed that the said truck is owned by the present applicant as a Proprietor of Hyderabad Transport Company. It revealed that the applicant is the supplier of the said contraband articles. On the basis of the said report, the police registered the crime against the accused.

3. Heard learned counsel Shri S.A.Mohta for the applicant and learned Additional Public Prosecutor Shri M.K.Pathan for the State.

4. Learned counsel for the applicant submitted that as far as ownership of the Hyderabad Transport Company is concerned, the GST Certificate and the information received from the Transport Department disclosed that it is owned by one Syed Muzaffar. Even, the statement of the co-accused nowhere discloses complete name of the applicant. CDRs also not disclose any communication between the applicant and other co-accused. The insurance details also nowhere show owner of the said truck is the applicant. Thus, as there is absolutely no material to connect him with the alleged offence, the applicant be released on bail.

5. In support of his contentions, he placed reliance on orders passed by this court (at Aurangabad Bench) in **Anticipatory Bail Application No.944/2020 and other**

connected matters (Munjabhau Manchakrao Rokde vs. The State of Maharashtra) decided on 30.9.2021 and Anticipatory Bail Application No.1530/2021 (Govind s/o Namdev Bhakare vs. The State of Maharashtra) decided on 12.1.2022.

6. *Per contra*, learned Additional Public Prosecutor Shri M.K.Pathan for the State strongly opposed the application and submitted that at the time of raid, the driver and cleaner of the said truck were present. They disclosed name of the applicant. They also disclosed that they procured said contraband articles at the instructions of the applicant. The said contraband and possession and transportation of the same are prohibited in the State of Maharashtra as per Notification dated 12.7.2024. The offence committed by the applicant and other co-accused is under Section 188 read with 328 of the IPC. The said contraband are prohibited as these articles are noxious and unfit for consumption as food. The huge quantity of the

prohibited food articles was found to be transported through the State of Maharashtra. The Division Bench of this Court in **Anand Ramdhani Chaurasia and anr vs. The State of Maharashtra and ors** was pleased to hold the judgment of **Anand Ramdhani Chaurasia and anr vs. The State of Maharashtra and ors** in Criminal Application (APL) No.4353/2016 as *per incuriam* and the Hon'ble Apex Court granted stay to the operation of the judgment passed by this court. He further submitted that the Motor Vehicles Department of the Telangana State revealed the applicant to be owner of the Hyderabad Transport Company. In view of *prima facie* material, the application deserves to be rejected.

7. In support of his contentions, learned Additional Public Prosecutor for the State placed on record **Notification** issued by the Government Maharashtra dated 12.7.2024. He also placed reliance on the following decisions:

1. Criminal Appeal No.1195/2018 (The State of Maharashtra and anr vs. Sayyed Hassan Sayyed Subhan and ors) decided by the Hon'ble Apex Court on 20.9.2018;

2. Vasim s/o Jamil Shaikh vs. State of Maharashtra and anr, reported in 2018 Law Suit (Bom) 2237;

3. Anand Ramdhani Chaurasia vs. State of Maharashtra, reported in 2019 ALL MR (Cri) 4402, and

4. Anticipatory Bail Application No.313/2021 (Sagar Sadashiv Kore vs. The State of Maharashtra) decided by this court at the Principal Seat at Bombay on 8.2.2021.

8. After hearing both the sides and perusing the investigation papers, it reveals that the huge contraband of 6653 kilograms worth of Rs.78,62,400/- was recovered from the said vehicle. On interception of the said truck, driver and cleaner of the said truck were taken into custody and interrogated. From their statements, it revealed that one Ismail Sheikh, resident of Hyderabad, is owner of the said truck and on his instructions, the said contraband articles are transported. During investigation, it revealed

that the said truck is owned by the Hyderabad Transport Company and as per GST Certificate and Transport Authority Details, the said transport company is owned by Syed Muzaffar. The GST Certificate also discloses name as Syed Muzaffar and trade name as Hyderabad Transport Company. Though investigating officer collected CDRs, it also nowhere show involvement of the applicant in the alleged incident.

9. As far as prohibition is concerned, there is no dispute that Section 188 of the IPC is attracted even in cases where the act complained of causes or tends to cause danger to human life, health or safety as well.

10. The Hon'ble Apex Court in Criminal Appeal No.1195/2018 (**The State of Maharashtra and anr vs. Sayyed Hassan Sayyed Subhan and ors**) *supra* observed that there is no bar to a trial or conviction of an offender under two different enactments. While interpreting provisions and notification issued by State of Maharashtra,

the Hon'ble Apex Court observed that there is no dispute that Section 55 of the FSS Act provides for penalty to be imposed for non compliance of the requirements of the Act, Rules or Regulations or orders issued thereunder by the Food Safety Officer. Section 188 is attracted even in cases where the act complained of causes or tends to cause danger to human life, health or safety as well.

Similar is the observation of the Division Bench of this Court in the case of **Sagar Sadashiv Kore vs. The State of Maharashtra** *supra* wherein also it is held that Section 328 of the IPC is attracted where the substance in question is poison or any stupefying, intoxicating or unwholesome drug or other thing is administered or caused to be taken by any person with an intent to cause hurt or with an intent to commit or to facilitate the commission of an offence or intent it to be likely that he will thereby cause hurt, becomes punishable under the provision. It is further held that in such type of cases Section 328 is attracted if the

offence is serious one. These offences need to be curbed for social welfare and health of the society particularly in today's era of COVID-19 pandemic.

11. Admittedly, in view of the above observations, the transporting of prohibited articles is serious offence. At the same time, there has to be a *prima facie* case against the applicant.

12. As far as ownership of the said truck is concerned, it nowhere shows that the applicant is owner of the said truck or proprietor of the Hyderabad Transport Company. Except the statement of the co-accused, there is no other material to connect him with the alleged offence. Even, the statement of the co-accused also nowhere discloses his complete name and, therefore, at this stage, the applicant has made out a case for grant of anticipatory bail. Accordingly, I proceed to pass following order:

ORDER

(1) The Criminal Application is **allowed**.

(2) The applicant be released on bail, in connection with Crime No.290/2025 registered with the non-applicant/police station for offences under Sections 223, 274, 275, and 123 of the BNS along with Section 3(1)(zz)(iv), 26(1), 26(2)(iv), 27(3)(e), 30(2)(a), and 59 of the Food Safety and Standard Act, 2006, on he executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.

(3) The applicant shall attend the police station once a week i.e. Monday between 10:00 am to 1:00 pm and shall cooperate with the investigating agency, till filing of chargesheet.

(4) The applicant shall not leave the India without prior permission of this Court.

(5) The applicant shall furnish his a detailed address of residence along with address proof and name of his two relatives along with their address proof.

(6) The applicant shall attend proceedings before the trial

court, unless there are exceptional circumstances.

(7) The applicant shall surrender his passport, if any, before the investigating agency.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!