

MHCC050065742022



**IN THE COURT OF SESSIONS AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI**

ANTICIPATORY BAIL APPLICATION NO. 1963 OF 2022

IN

(C.R. No. 2207 of 2022 of Sakinaka Police Station, Mumbai)

Fahim Ahmed Hakimoddin Shaikh,

Age : 41 yrs., Occupation : Business,
R/o : Flat No. C/5, Kurla Sidharth CHS.,
Pipe Line Road, Kajupada, Sakinaka,
Mumbai : 400 072

..Applicant

Vs

The State of Maharashtra

(through Sakinaka Police Station)

..Respondents

Ld. Adv. Mateen Shaikh, for the applicant.

Ld. APP Smt. Poornima Chavan, for the State.

**CORAM : H.H. THE ADDITIONAL SESSIONS JUDGE
R.M. MISHRA
(C.R.NO.4)**

DATE : 17th December, 2022

ORAL ORDER

This is an application for grant of anticipatory bail under section 438 of Cr.P.C., in connection with C.R. No. 2207 of 2022, registered with Sakinaka Police Station for the offences punishable

under sections 188, 270, 273, 328 read with section 34 of the Indian Penal Code and sections 26(2), 26(2)(6), 27 (3) (D) (E), 30(2) (A), 59, 3(1) (z) (iv) of the Food Safety And Standards Act, 2006.

2 Perused application and say. Heard learned advocate for the applicant and learned APP for the State.

3 On 30/11/2022 at the instance of the complainant aforesaid offence came to be registered.

It is the case of the prosecution that on 30/11/2022 on the basis of secret information the complainant raided the spot which is the shop occupied by co-accused Shaikh Mohd. Sakiq under the name and style of “ Tayyab Supari and General Stores ”. After introducing himself to the accused the complainant took search in his shop in the presence of panchas. At that time, it was found that the accused had possessed packets of contraband articles i.e. tobacco, Gutka pan masala etc. total Rs. 9,990/- for selling in contravention of the order of the Food Safety Commission, State of Maharashtra. The accused did not provide information as to from whom he had purchased the said contraband muddemal. The accused also took the complainant at his godown and after taking search of that place the accused also found possessed sainted Tobacco Pan Masala i.e. prohibited contraband worth Rs. 1,990/-. The accused also shown his vehicle in which he had stored sainted Tobacco and Gutkha packets etc. worth Rs. 21,000/-. Accordingly, necessary samples were drawn separately from the said muddemal by drawing panchnama in the presence of panchas. The

aforesaid muddemal including the vehicle also came to be seized. Accordingly, report came to be lodged in the police station against the aforesaid accused and the present applicant being the owner of the said shop.

4 By this application, the applicant has contended that he is permanent resident of Kajupada, Sakinaka, Mumbai and having no earlier criminal antecedent. It is contended that the main accused was arrested on the same day. After he was produced before the learned Metropolitan Magistrate on 02/12/2022, he was remanded in the police custody and thereafter, the main accused came to be released on bail on 05/12/2022. It is further contended that the applicant is innocent and he has not committed any such offence. He had given the said shop to the main accused on Leave and License agreement on 01/05/2022. He is nothing to do with the alleged contraband articles. He is falsely implicated in this crime. The offence under section 328 of the Indian Penal Code is not applicable in his case. The applicant is not required for any custodial interrogation. The entire contraband articles already been seized. The applicant is ready to abide the conditions imposed by the court. The applicant, therefore, prayed for his release on anticipatory bail.

5 Application is resisted by the prosecution vide say at Exh. 03 mainly on the ground that the applicant is the main culprit and necessary information is to be elicited about the whereabouts of additional muddemal. There is possibility of absconding of the applicant

and tampering with the evidence as well as possibility of pressurizing the complainant and other prosecution witnesses, if the applicant is granted anticipatory bail.

6 After considering the submissions of learned advocate for the applicant and learned APP, I have also gone through the case diary. The learned advocate for the applicant submitted that the applicant is the original owner of the said shop and the main accused is his licensee. He submitted that the offence under section 59 of the Food Safety and Standards Act, 2006 provides punishment for unsafe food with imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees. He also invited attention to the provisions of Section 73 which provides that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence for a term not exceeding one year. The learned advocate for the applicant also relied upon the provision of Section 27 of the Cigarettes and other Tobacco Products Act, 2003 which provides that offence punishable under this Act shall be bailable. He also invited attention towards the Schedule of the Act, 2003 with Section 3(p) which defines “ Tobacco Products ” means the products specified in the Schedule.

7 Apart from the aforesaid provisions, the learned advocate for the applicant placed reliance on -

Munjabhau Manchakrao Rokde Vs The State of Maharashtra, Anticipatory Bail Application No. 944 of 2020 dtd. 30/09/2021 the

Hon'ble Bombay High Court, bench at Aurangabad.

**Mohammad Talha Ishrat Khan Vs The State of Maharashtra,
Anticipatory Bail Application No. 864 of 2022 dtd. 31/03/2022**

**Parvez Ansari and Another Vs State of Maharashtra,
Anticipatory Bail Application No. 2620 of 2022 dtd. 26/09/2022**

**Shaikh Israr Ahmad Niyaz Ahmad Vs State of Maharashtra
through Wada Police Station, Palghar, Anticipatory Bail Application
No. 2835 of 2022 dtd. 13/10/2022**

**Suraj Harish Thakkar Vs The State of Maharashtra,
Anticipatory Bail Application No. 2896 of 2022 dtd. 17/10/2022**

8 After considering the submissions of both sides, I have also gone through the provisions of the aforesaid Acts coupled with the observations and ratio laid down in case laws cited supra. There cannot be any doubt that apart from Section 328 of the Indian Penal Code, other offences in this crime are bailable in nature. So far as the offence under section 328 of the Indian Penal Code is concerned, in **Munjabhau (supra)**, it has been discussed by the Hon'ble High Court as to whether Section 328 of the Indian Penal Code is applicable or not in such offences cannot be construed at initial stage. On the other hand, in **Shaikh Israr (supra)**, it has been observed that the provisions of Section 328 of the Indian Penal Code are applicable or not in case of prohibited Gutkha and Pan Masala is already subjudice before the Hon'ble Apex Court.

9 In the aforesaid background, if the facts in this crime are taken into account, it reveals that the co-accused from whose possession contraband articles recovered is already arrested and after his custodial interrogation, he is also released on bail by the learned Metropolitan Magistrate. The present applicant is the owner of the said shop from where muddemal came to be recovered from the possession of the co-accused. The applicant has also filed copy of Leave and License Agreement to show that he had given the said shop on rent to the co-accused. In these circumstances, in my view, nothing will be served by arrest of the applicant who is supposed to be the owner of the said shop. Nothing is brought on record by the Investigating Agency to show earlier criminal antecedent of the applicant. Therefore, having regard to the aforesaid provisions coupled with the observations and ratio laid down in case laws cited supra, in my view, purpose will be served if the applicant is granted anticipatory bail by imposing certain conditions. In this view of the matter, following order is passed :

ORDER

- 1) Application under section 438 of the Code of Criminal Procedure for the grant of anticipatory bail is allowed.
- 2) In the event of arrest of the applicant **Fahim Ahmed Hakimoddin Shaikh**, resident of Kajupada, Sakinaka, Mumbai in connection with C. R. No. 2207 of 2022, registered with Sakinaka Police Station for the offences punishable under sections 188, 270, 273, 328 read with section 34 of the Indian Penal Code and

sections 26(2), 26(2)(6), 27 (3) (D) (E), 30(2) (A), 59, 3(1) (zz) (iv) of the Food Safety And Standards Act, 2006, he be released on bail, on his executing PR Bond of Rs. 15,000/- (Rupees Fifteen Thousand Only), with one solvent surety in the like amount, on the following conditions -

a) The applicant shall attend the police station on every Sunday between 10.00 to 12.00 hours and shall cooperate the Investigating Agency as and when called upon until investigation is completed.

b) In order to avoid the possibility of absconding of the applicant, he shall produce his proof of residence in support of the proof of his close relative.

c) The applicant shall not attempt to contact with the complainant nor shall tamper to pressurize any of the prosecution witnesses in any manner.

3) Concerned Police Station be informed accordingly.

4) Anticipatory Bail Application No. 1963 of 2022 is hereby disposed of accordingly.

sd/-

(R.M. Mishra)

Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai

Dt. 17/12/2022

Dictated on : 17/12/2022
Transcribed on : 17/12/2022
Checked on : 17/12/2022
Signed on : 17/12/2022

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

19/12/2022 at 11.20 a.m.
 UPLOAD DATE AND TIME

Mrs. S.B. Vichare
 NAME OF STENOGRAPHER

Name of Judge (with Court room no.)	HHJ R.M. Mishra, City Civil & Sessions Court, Borivali Div., Dindoshi, Mumbai (C.R.No. 04)
Date of Pronouncement of JUDGEMENT/ORDER	17/12/2022
JUDGEMENT/ORDER signed by P.O. on	17/12/2022
JUDGEMENT/ORDER uploaded on	19/12/2022