

ABA-1964/2022

1

MHCC050065722022



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

ANTICIPATORY BAIL APPLICATION NO.1964 OF 2022
IN
(C.R. NO. 132 OF 2020 of Kasturba Marg Police Station)
(CNR NO.MHCC05-006572-2022)

Shaukat Ali Khushiyal Ahmed Pathan
Aged : 30 years, Occ : Service,
Residing at : D/1706 Cluster -I,
Shanti Park, Mira Road (East),
Thane – 401 107.

...Applicant/Accused

Versus

The State of Maharashtra
At the instance of Kasturba Marg Police Station
vide C.R. No.132 of 2020.

...Respondent.

Ld. Adv. Mateen Shaikh for applicant.
Ld. APP. Pachpohar for Respondent.

CORAM : H.H. ADDITIONAL SESSIONS JUDGE
SHRI D. G. DHOBLE (C.R. No.7)

DATE : 20th December, 2022.

ORDER

**This is an application under Section 438 of Criminal
Procedure Code of applicant/accused No.3 for anticipatory bail.**

2 The applicant/accused No. 3 is apprehending his arrest in Crime No.132/2020 registered with Kasturba Marg Police Station for the offence punishable under Sections 328, 188, 272, 273 r/w 34 of Indian Penal Code 1860, r/w under Sections 26, 2(2)(i)(v), 27(3)(e), 30(2)(a) 59 of Food Safety and Standards (Prohibition & Restrictions on Sales) Regulations 2011.

3 It is alleged by the prosecution that on 16/03/2020, at about 6.45 a.m. on the basis of secret information about transportation of Pan masala (prohibitory tobacco product) at the Devipada Junction, Western Express Highway, Borivali (East), Mumbai, Police Inspector and his staff accosted the motor vehicle No.MH 48 BM 0187 TATA ACE GOLD TEMPO and found prohibitory gutkha, i.e. (Pan masala) in the car worth Rs.5,44,320/-(Rupees Five Lacs Forty Four Thousand Three Hundred Twenty). Accordingly, police officer arrested the accused No.1, seized car and contraband articles. On the basis of information given by the informant namely, Smt. Varsha Kharat, offence came to be registered against the applicant and others.

4 I have heard the learned Counsel for applicant/accused, APP for the respondent/State.

5 Advocate for the applicant submitted that except offence under Section 328 of IPC, all other offences are bailable in nature. He submitted that only on the information given by the accused No.1 regarding involvement of this applicant, the applicant is implicated. He submitted that in fact the applicant has no any concerned with the alleged offence. There is no any criminal antecedent of like offence to

the discredit of the applicant. The alleged contraband is already seized from accused No.1. The accused No.1 is arrested and released on bail. Therefore, the custodial interrogation of the applicant is not required. The applicant/accused is ready to abide all terms and conditions as imposed upon him by this Court. He submitted that prima facie the offence under Section 328 of IPC is not applicable.

6 In support of his submissions, he relied upon the following judgments.

i) Mohammad Talha Ishrat Khan Vs. The State of Maharashtra in ABA No.864/2022 decided on 31/03/2022.

ii) Parvez Ansari and another Vs. State of Maharashtra in ABA No.2620/2022 decided on 26/09/2022.

iii) Shaikh Israr Ahmad Niyaz Ahmad Vs. State of Maharashtra through Wada Police Station, Palghar, ABA No.2835/2022 decided on 13/10/2022.

iv) Suraj Harish Thakkar Vs. The State of Maharashtra, ABA- 2896/2022 decided on 17/10/2022.

v) Pramod K. Shah Vs. Commissioner of Custom (Export Promotion S.I.I.B.(Export) & Anr., Criminal Application No.4230 of 2006 decided on 18/12/2006.

vi) Anand Ramdhani Chaurasia and Others Vs. The State of Maharashtra and others, in Criminal Writ Petition No.3607 of 2019, decided on 13/09/2019.

7 On the other hand, the learned APP appearing for the State submitted that the contraband worth of Rs.5,44,320/- is recovered from accused No.1. Accused No.1 informed to the police that this applicants alongwith other are involved in the alleged offence. The alleged

contraband is dangerous to the health of the public at large. The offence is registered on 16/03/2020 since then the applicant is absconded. If the anticipatory bail is allowed, the applicant will tamper the evidence and will not assist to the investigation. He submitted that considering the nature of the offence and involvement, the bail application may be rejected.

8 The Hon'ble Bombay High Court in the case of *Anand Ramdhani Chaurasia and Others Vs. The State of Maharashtra and others* held that mere possession of Gutkha would not attract provisions of Section 328 of the IPC. The said issue is pending before the Hon'ble Supreme Court for its due decision wherein the Hon'ble Apex Court granted stay to the judgment and order of the Hon'ble Bombay High Court. The Hon'ble Bombay High Court in the case of *Pramod K. Shah Vs. Commissioner of Custom (Export Promotion S.I.I.B.(Export) & Anr., Criminal Application No.4230 of 2006 decided on 18/12/2006* held that the judgment being stayed does not wipe it out until and unless it is so wiped out, it continues to be binding on the lower and sub-ordinate courts.

9 Keeping in view the ratio of the above judgment to the fact of the present case. Except offence under Section 328 of IPC, all other offences areailable in nature. Furthermore, so far as involvement of the applicant is concerned, there is statement of the accused No.1 that the present applicant alongwith other are involved in the present offence. In fact except the bare allegation there is nothing on record to show a direct involvement of the applicant. No doubt, the investigation in the present matter is going on. In this case, the contraband is seized from the accused No.1, therefore, custodial interrogation of the applicant is

not required. Furthermore, the prosecution did not point out that the vehicle is belonged to the applicant and there is direct nexus to the offence of the applicant. Therefore, the ratio of the judgment relied upon by the applicant is squarely applicable. Hence, I am inclined to allow the bail application. Hence, I pass following order -

ORDER

- 1 Anticipatory Bail Application No.1964 of 2022 is allowed.
- 2 In the event of arrest of applicant, **Shaukat Ali Khushiyal Ahmed Pathan**, he shall be released on bail on furnishing P.R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with one solvent surety in the like amount in the Crime No.132/2020 registered with Kasturba Marg Police Station for the offence punishable under Sections 328,188,272,273 r/w 34 of Indian Penal Code, under Sections 26,2(2)(i)(v), 27(3)(e), 30(2)(a) 59 of Food Safety and Standards (Prohibition & Restrictions on Sales) Regulations 2011.
 - ii) Accused/applicant shall not directly or indirectly make any threat and shall not tamper prosecution witnesses.
 - iii) Accused/applicant shall attend Kasturba Marg Police Station on every month of 1st Monday in between 3.00 p.m. to 5.00 p.m. for the period of three months.
 - iv) Accused/applicant shall make himself available for investigation as and when called or required by Investigating Officer.

v) Accused/applicant shall co-operative to the investigation.

3 Anticipatory Bail Application No.1964 of 2022 stands disposed of accordingly in above terms.

Dictated and pronounced in open Court.

Sd/-

(D. G. DHOBLE)

Dated : 20/12/2022

Additional Sessions Judge,
Borivali Div.,Dindoshi, Mumbai.

Dictated on : : 20/12/2022
Transcribed by steno on : : 20/12/2022
Checked & Signed by HHJ on : : 21/12/2022

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

Date : 21/12/2022

Time : 12.00 Noon

UPLOAD DATE AND TIME

Mrs. P. P. Dabholkar
(Stenographer Grade-I)
NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)	HHJ Datta G. Dhoble (C.R. No.7)
Date of Pronouncement of JUDGMENT/ ORDER	20/12/2022
JUDGMENT/ORDER signed by P.O. on	21/12/2022
JUDGMENT/ORDER uploaded on	21/12/2022