

**IN THE COURT OF SESSIONS FOR GR.BOMBAY
AT BOMBAY
ANTICIPATORY BAIL APPLICATION NO. 2780 OF 2022
CNR NO. MHCC02-017045-2022**

Mithu Viren Rishidev

Age: 29 Years. Occ: Driver.

R/a: Ward No.1, Shahpur Chaumukh,
Madhepura Bihar, 852115

... Applicant/Accused

Versus

State of Maharashtra
(At the instance of Tilak Nagar
Police Station.)

... Respondent.

Learned Advocate Mr.Zeeshan Khan for applicant.
Ld.APP Mr.Ramesh Siroya for the State.

**CORAM : HIS HONOUR THE ADDL.SESSIONS JUDGE
SHRI.M.S.KULKARNI (C.R.NO.56)**

DATED : 02nd January, 2023.

**(DICTATED AND PRONOUNCED IN OPEN COURT)
ORAL ORDER**

1. This is the application for anticipatory bail in respect of offences punishable under Sections 179, 188, 223, 272, 273, 328, 26(2) (i) 27 (3), (e), 3 (1), (zz) (iv), IPC read with Section 59 of Food Safety Act arising out of C.R.No. 915/2021 registered with Tilak Nagar Police Station.

2. The prosecution case is short is that one TATA A.C.E. Tempo having registration No. M.H. 04 JK 5998 was intercepted within the limits of Tilak Nagar police station. Wherein the first informant PSI Amol Salukhe had found Ghutka eating of which is prohibited in State of Maharashtra. Accordingly offences as noted above came to be levelled against accused including applicant/accused.

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3. The applicant/accused asked for bail on the ground that;
He has been falsely implicated, Offences except offence punishable under Section 328 are bailable. While offence punishable under Section 328 does not attract in the matter.

4. The prosecution has objected bail on the grounds that;
a. The applicant/accused has direct connection with the said contraband material so his custodial interrogation is very much essential.

5. I heard Learned advocate Mr. Zeeshan Khan for the applicant/accused and Learned APP Mr.Siroya for the state at length.

6. In the judgment **Mohammad Talha Ishrat Khan Vs. The State of Maharashtra in ABA No.864 of 2022 decided on 31.3.2022** Hon'ble Bombay High Court through para No.3 lays down as;

3. The aforesaid crime is registered pursuant to the FIR dated 29.12.2021. The case of the prosecution is that a tempo bearing MH04-KU-1433, which was transporting Gutkha was intercepted and the driver was arrested. It is stated that the driver had informed the concerned police that the applicant had procured said Gutkha, which was being transported. It was under these circumstances crime was also registered against the applicant for aforesaid offences. Except offence under Section 238 of the IPC all other offences are liable. Prima facie mere possession of Gutkha would not attract provisions of Section 328 of the IPC.

7. During submission the learned advocate for the applicant/accused has relied on the judgment and order of the Hon'ble

Bombay High Court, in case **Manjubhau Manchakrao Rokde and ors Vs. State of Maharashtra (Decided on 30.9.2021)** the Hon'ble High Court after referring judgment of Hon'ble Apex Court in the cases

I) State of Maharashtra Vs. Syed Hasan Syed Subhan (AIR 2018 SC 348) and

II) Joseph Kurian Philip Jose Vs. State of Kerala (1994) 6 SCC 535 held in para No.21 as;

21. This brings me back to the requisites of Section 328 of IPC. On closer scrutiny of Section 328, it is obvious for the prosecution to prove that the accused was directly responsible for administering poison etc. or causing it to be taken by any person, through another. Simply stating, the accused may achieve and complete the act by himself or by means of another. It is nowhere alleged that the applicants were primarily responsible for administering poison or by involving third person, who had authority to do so, caused it (poisonous substance) to be used by others. It would be premature to say that act of storage or transporting, as is alleged against the applicants, should be construed as fulfilling the requisites of Section 328 of IPC. There is need to guard against this hard-headed view, which has been canvassed by the learned APP, on a sheer contemplation that the act of applicants would tantamount to an act of "administering" or "causing to be taken". The ratio laid down in the case of Joseph Kurian (supra) is all pervasive qua the cases in hand and applies with full rigour.

8. These judgments are squarely applicable to the present matter. Custodial interrogation of the applicant/accused is absolutely unwarranted. Hence, order;

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ORDER

1. Anticipatory Bail Application No.2780 of 2022 is allowed.
2. In the event of arrest of the applicant **Mithu Viren Rishidev** in Crime No. 915/22 registered with Tilak Nagar Police Station for the offences punishable under Sections 179, 188, 223, 272, 328 of I.P.C. and Section 26(2) (i), 3 (1) (zz), 26 (2) (iv), 27 (3) (D), 27 (3) (e) the Food Safety Act, he shall be released on his executing personal recognizance for an amount of Rs.30,000/- with one or more sureties in the like amount subject to the following conditions;
 - a) The applicant/accused is directed to attend Tilak Nagar police station on every Monday in between 9.00 a.m. to 11.00 a.m. till filing of the chargesheet.
 - b) He shall co-operate Investigating officer.
 - c) He shall not tamper with the evidence or influence the

(M.S.Kulkarni)
Addl.Sessions Judge,
City Civil and Sessions Court,
For Greater Bombay

Date : 02.01.2023.

Dictated on : 02.01.2023.
Typed on : 04.01.2023.
Draft checked on : 05.01.2023
Signed on : 05.01.2023

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

UPLOAD DATE AND TIME : 05.01.2023 at 12.30 p.m.
NAME OF STENOGRAPHER : Mrs.Prajakta K. More

NAME OF THE JUDGE	HHJ SHRI.M.S.Kulkarni (C.R.No.56)
Date of Pronouncement of Order	02.01.2023
Order signed by the P.O. On	05.01.2023
Order uploaded on	05.01.2023