

# Shaikh Mohammad Ismael And Anr vs State Of Maharashtra on 4 March, 2024

**Author: Sarang V. Kotwal**

**Bench: Sarang V. Kotwal**

2024:BHC-AS:10900

1-A

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 588 OF 2024

1. Shaikh Mohammad Ismael
2. Mohammad Faruq Yusuf Ali

.... Applica

YUGANDHARA  
SHARAD  
PATIL

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by  
YUGANDHARA  
SHARAD PATIL

The State of Maharashtra

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Mr. Hrishi Ghorpade a/w Anup Patil i/b Prasad Kulkarni for the  
applicants.

Ms. Mahalakshmi Ganapathy, APP for the State/Respondent.

CORAM :SARANG V. KOTWAL, J.

DATE : 4th MARCH, 2024 P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No 129 of 2023

registered at Bhigwan Police Station, Pune under sections 328, 188, 269, 273 of the Indian Penal Code and under Sections 26 and 59 of the Food Safety and Standards Act, 2006.

2. Heard Mr. Ghorpade, learned counsel for the applicant and Ms. Ganapathy, learned APP for the State.

y.s.patil

1-ABA-588-2024.odt

3. The F.I.R. is lodged by one Swapnil Ahiwale, police constable attached to Local Crime Branch, Pune. He has stated that on 07/04/2023, he and his colleague Ekshinge were searching one absconding accused. They received a secret information that one truck bearing No. AP-12-W-1191 was parked containing scented gutkha. The police arranged to conduct the raid. Two panchas were called. Raiding party and the panchas went to the spot where the truck was parked. There were two persons sitting in the truck. They were Ibrahim Abdul Rashid Naikwadi and Navaz Qureshi. They told the police that the truck contained scented gutkha. The police conducted search of the truck. They found 75 gunny bags containing prohibited articles of pan masala, scented tobacco etc. The contraband was worth Rs. 33,75,000/-.

The samples were drawn and goods were seized. Both those accused were arrested. On this basis, the FIR is lodged. The charge-sheet is filed.

4. Learned counsel for the Applicants submitted that there is no evidence against the present Applicants though they are shown as accused in the charge-sheet filed against the co-accused, y.s.patil 2 of 5 1-ABA-588-2024.odt who were arrested. He submitted that the Applicants are willing to join the investigation and if some evidence is collected against them, then this Court can consider whether custodial interrogation of the Applicants is necessary. At this stage, there is nothing against the present Applicants except statements of the co-accused. Their names transpired in the remand report of the arrested accused for the first time on 10/04/2023. He submitted that the Applicant No. 2 was merely the owner of the truck and he has no connection with the offence.

5. Learned APP opposed these submissions. She relied on the statements recorded during the investigation. She submitted that the offence is quite serious. The accused are spreading these prohibited goods in the society which affect the health of the society. She referred to the statement of arrested co-accused Ibrahim Abdul Rashid Naikwadi. She submitted that at the stage of consideration of anticipatory bail application, statements of co-accused can be considered because that is the lead for the investigating agency to nab the real culprits. Otherwise only the small offenders who are caught at the spot can be prosecuted and y.s.patil 3 of 5 1-ABA-588-2024.odt the

and main offenders remained at large.

6. I have considered these submissions. I have perused the charge-sheet. The statements of the raiding party members and the panchnama support the narration in the FIR. At this stage, statement of the arrested co-accused of the Applicants i.e. Ibrahim is important. It is recorded on 09/04/2023. He has stated that he was working as a driver on that truck. The Applicant Faruq was the truck owner. On 06/04/2023, the Applicant Faruq told him that the truck was loaded with gutkha and that he should take that truck to Pune. Once he reached there, he should contact the other Applicant Ismael, who would send his persons and that accused Ibrahim should hand over the truck to them. After unloading the goods he would return the truck.

7. Learned APP also relied on the CDR which shows that there was communication between the accused Ibrahim and the Applicant Ismael on 07/04/2023. The conversation was for 162 seconds. This supports the statement of the co-accused. Thus, at this stage, there is sufficient and definite materials against the y.s.patil 4 of 5 1-ABA-588-2024.odt present Applicants. These materials can be taken into consideration. Otherwise, the investigating agency can not investigate the offence and cannot interrogate the main accused. The role of the Applicants is clearly mentioned by the co-accused They cannot claim ignorance or innocence in respect of this offence. Their custodial interrogation is necessary. They are the main accused and offenders in this offence. The arrested co-accused have played comparatively a minor role. It is necessary to interrogate the present Applicant to check the chain of supply and sale. Therefore, custodial interrogation of both the Applicants is necessary. They cannot be protected under section 438 of Cr.P.C. The Application is rejected.

(SARANG V. KOTWAL, J.)

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