

# Ganesh Champalal Patil vs The State Of Maharashtra on 20 October, 2021

**Author: M.G. Sewlikar**

**Bench: M.G. Sewlikar**

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

40 BAIL APPLICATION NO.930 OF 2021

GANESH CHAMPALAL PATIL  
VERSUS  
THE STATE OF MAHARASHTRA

...  
Advocate for Applicant : Mr. Jadhav Satej S.  
APP for Respondents/State : Mr. V.M. Kagne  
...

CORAM : M.G. SEWLIKAR, J.  
DATE : 20th October, 2021

P.C.:-

This is an application under Section 439 of the Cr.P.C. for releasing the applicant on bail in connection with Crime No.325/2021 registered with Upnagar Police Station, Nandurbar for the offence punishable under Section 328, 188, 272, 273 of the I.P.C. and under Section 26(2)(i), 3(1) (22), 27(3)(e), 26(2)(iv), 30(2), 27(3)(d) and 59 of Food Safety and Standards Act.

2. Prosecution case in short is that the informant is Food Inspector. Maharashtra Government has banned production of gutka, pan masala or scented tobacco, scented betel nut containing nicotine or magnesium carbonate. On 04.07.2021 at 4.00 am at Chaar Rasta Eicher truck bearing no.MH-18-BG-3747 was found trafficking pan masala and scented tobacco.

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On inquiry the person sitting in the Eicher truck mentioned his name as Ganesh Champalal Patil. He was the driver of the Eicher truck. On inspecting the truck 14,560 packets of banned Vimal pan masala worth Rs.27,22,720/- were found. In all 33 pouches were found. All these items were siezed and FIR came to be lodged under the aforesaid sections.

3. Heard Shri Jadhav learned counsel for the applicant and Shri Kagne learned APP for the State.

4. Charge-sheet is filed. On perusal of the FIR and the papers annexed with the charge-sheet, it is evident that no allegation is there indicating that the applicant or any other accused had administered or attempted to administer poisonous substance to anyone. In order to invoke Section 328 of the I.P.C. the essential requirement is that there has to be administration of poisonous substance. Learned counsel Shri Jadhav placed reliance on the case of Joseph Kurian Philip Jose V/s. State of Kerala; (1994) 6 SCC 535, in which following observations have been recorded by the Hon'ble Apex Court:

" In order to prove offence under Section 328 the prosecution is required to prove that the substance in question was a poison, or any stupefying, intoxicating or unwholesome drug etc, that the accused administered the substance to the complainant or caused the complainant to take such substance, that he did so with intent

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to cause hurt or knowing it to be likely that he would thereby cause hurt, or with the intention to commit or facilitate the commission of an offence. It is therefore, essential 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. In other words, the accused may accomplish the act by himself or by means of another."

5. Since the evidence in this regards is lacking the applicant is entitled to be released on bail. Learned counsel Shri Jadhav invites attention of this Court to the order passed by this Court (Coram: V.G. Bisht, J.) in anticipatory bail application no.944/2020 (Munjabhau Manchakraon Rokde V/s. The State of Maharashtra) in which the owner of the truck has been released on anticipatory bail. Role of the applicant and the owner of the truck is identical. In this view of the matter, the applicant deserves to be released on bail. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) Applicant be released on PR bond of Rs.15,000/- with one

solvent surety in the like amount, in connection with Crime No.325/2021 under Section 328, 188, 272, 273 of the I.P.C. and under Section 26(2)(i), 3(1) (22), 27(3)(e), 26(2)(iv), 30(2), 27(3)(d) and 59 of Food Safety and Standards Act registered with Upnagar Police Station, Nandurbar.

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- III) These observations are made only for the disposal of this

application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.] mub