

# Sarfrazaddin Mohammad Yunus Shaikh vs The State Of Maharashtra on 8 February, 2022

**Author: C.V. Bhadang**

**Bench: C.V. Bhadang**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.321 OF 2022

Sarfrazaddin Mohammad Yunus Shaikh ... Applic  
Vs.  
The State of Maharashtra ... Respon

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Ms.Sana R. Khan i/b Hulyalkar and Associate for the Appl  
Mr.Y.Y. Dabke, APP for the Respondent -State.  
Mr.Avinash Shinde, PSI, Hadapsar Police Station, Pune Ci

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CORAM : C.V. BHADANG, J.

DATE : 8 FEBRUARY

P.C.

. Heard learned counsel for the parties

2. The Applicant apprehending arrest in connection with the investigation of Crime No.34 of 2022 of Hadapsar Police Station, Pune under Section 272, 273, 328, 420, 465, 467, 468 read with Section 34 of the Indian Penal Code, Section 26(2)(i) and 26(2)(iv) and 59 of the Food and Safety Standards Act, is seeking anticipatory bail.

3. According to the prosecution, Ghutka

Masala was being transported Eicher truck No.MH-14-GU-84 from Nipani and Bizapur to the godown at Phursungi, Pune

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The driver of the truck Samiullah Murtaja Hussain was inspected and during his interrogation it was revealed that the said truck was belonging to the Applicant.

4. The learned counsel for the Applicant submitted that the material section which is non-bailable is Section 328 of Indian Penal Code. The learned counsel has placed reliance on the decision of the Supreme Court in Joseph Kurian & Anr. Vs. State of Kerala 1 and the order dated 30 September 2021, passed in a batch of Anticipatory Bail Applications No.944 of 2020 and others, at the Aurangabad Bench, in order to submit that in similar circumstances, it has been held that Section 328 of IPC may not be attracted as there was no attempt to administer any intoxicant or stupefying substance by the Applicant with an intention to commit an offence. The learned counsel further pointed out that the learned Single Judge of this Court at Mumbai has taken a contrary view by order dated 6 November 2020 in ABA (Stamp) No.2489/2020 which order is subject matter of challenge before the Supreme Court in Special Leave to Appeal (Cri.) No.6788/2021. It is pointed out that the Supreme Court by an order dated 21 September 2021 has granted interim protection to the Petitioner therein.

5. The learned Additional Public Prosecutor submitted that sizable proof of guthka/pan masala which is banned was 1(1994) 6 Supreme Court Cases 535

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being transported in the truck belonging to the Applicant and a detailed investigation of the matter is necessary for which the custody of the Applicant is required.

6. Prima facie, it appears that the learned Single Judge sitting at Aurangabad Bench, has taken a view that Section 328 of IPC may not apply in such a case. The contrary view taken by the Coordinate Bench at Mumbai is subject matter of challenge before the Supreme Court in which interim protection has been granted. It is noticed that Application involving similar issue are kept on 18 February 2022. Hence, the following order.

ORDER

(i) In the event of his arrest in connection with investigation of Crime No.34 of 2022 of Hadapsar Police Station, Pune, the Applicant be released on bail on executing a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

(ii) The Applicant shall report to Investigating Officer on 14 and 15 February 2022 between 11.00 a.m. to 1.00 p.m. and as and when directed by the Investigating Officer.

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(iii) The Applicant shall cooperate with the Investigating Agency and shall not tamper with the prosecution evidence / witnesses.

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