

Sharif Ahmed Shafiq Ahmed Alvi vs The State Of Maharashtra on 5 July, 2022

Author: Bharati Dangre

Bench: Bharati Dangre

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1647 OF 2022

Sharif Ahmed Shafiq Ahmed Alvi] ... Applicant

Vs.

The State of Maharashtra] ... Respondent

...

Mr. M. Shah with Mr. Kunal Bilaney i/b Mr. Kushal Mor for the
applicant.

Ms. A.A. Takalkar, A.P.P. for the State.

Mr. Rahul Rakh, PI attached to Crime Branch is present.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 05TH JULY, 2022.

P.C.:-

1. Heard learned counsel for the applicants and learned APP
for the State.

2. The applicant is apprehending his arrest in C.R.No. 183 of
2022 registered with Mira Road Police Station invoking Sections

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188, 273 and 328 read with Section 34 of the IPC and Section 26(2)(ii)(iv) and 30-2(a) of the Food Safety and Standards Act, 2006.

3. On 27/4/2022, on a secret information being received to the effect that the prohibited substance in the form of Gutka, Paan Masala, Scented Tobacco, and Mixture of Betel nut were being transported, a raid was conducted and some white bags were recovered from the back seat of the rickshaw. The said bags contained the prohibited substance and the rickshaw driver as well as the persons accompanying him were brought to the police station. The prohibited substance was found to be worth Rs.37,800/- (SHK Gutka) Rs.23,700/- (Vimal Gutka) and Tobacco worth Rs.2,640/-. During investigation, the name of the applicant was surfaced as dealer of the prohibited substance. That is how, he is named as accused in the C.R.

4. Barring the offence under Section 328 of the IPC, all other offences are bailable. The position of law whether an offence under Section 328 of the IPC gets attracted when the prohibited substance, is transported or supplied is not yet crystallized. A decision of the Division Bench of this Court in case of Anand Ramdhani Chaurasiya & Anr. v. The State of Maharashtra [(2019) SCC Online Bombay 1857], where a view was taken that Section 328 of the IPC could not have been invoked, has been stayed by the Hon'ble Apex Court. However, in Special

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Leave Petition No.843 of 2021 [Mohd. Ali Rehman @ Mohammed Ali Abdul Rahman Shaikh v. State of Maharashtra], the Hon'ble Apex Court, on 13/11/2021 took note of the pending matter before it, in regard to invocation of Section 328 of the IPC. The special leave petition is directed to be tagged with the special leave petition filed by the State of Maharashtra in case of Anand Chaurasiya (supra). The Hon'ble Apex Court has directed the Investigating Officer not to arrest the petitioner subject to he rendering co-operation.

5. Considering the conundrum of the applicability of provisions of Section 328 of the IPC in a situation like this, and since the issue is pending before the Hon'ble Apex Court, pursuant to the view of the Division Bench of this Court and since judgment of the Division Bench taking a view that it cannot be invoked, has been stayed, the following ad-interim order would serve the purpose of justice for the time being. Hence, the following order:-

ORDER

(a) In the event of arrest, the applicant - Sharif Ahmed Shafiq Ahmed Alvi shall be released on bail in C.R. No.183 of 2022 registered with Mira Road Police Station, District Thane on executing P.R. bond to the extent of Rs.50,000/-

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and furnishing one or two sureties of the like amount.

(b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.

(c) The applicant shall report to the Mira Road Police Station, Dist. Thane on every Friday and Saturday between 10.00 a.m. and 02.00 p.m. for a period of two weeks and render his co- operation to the Investigating Officer.

6. List the application on 01/08/2022.

7. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

[SMT. BHARATI DANGRE, J.] AJN