

Kailas Ramakant Borlepawar vs The State Of Maharashtra on 12 June, 2023

Author: Amit Borkar

Bench: Amit Borkar

2023:BHC-AS:15469

12-aba3300

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3300 OF 2022

Kailas Ramakant Borlepawar	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Shailesh S. Kharat for the applicant
Mrs. Rutuja Ambekar, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JUNE 12, 2023

P.C.:

1. The applicant is seeking relief under Section 438 of the Criminal Procedure Code, 1973 in connection with C.R. No.1255 of 2022 dated 6th August 2022 for offences punishable under Section 328, 272, 273, 188 of the Indian Penal Code, 1860 and section 30(2)(a) of the Food Safety and Standards Act, 2006.

2. The case of prosecution in short is that on 5th August 2022, they seized huge quantity of pan masala (prohibited substances). Based on statement of person from whose custody banned substances were seized, name of the applicant surfaced. The co-accused stated in his statement, that the applicant along with another one person are the suppliers of banned substances.

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3. Apprehending arrest, the applicant filed application under Section 438 of the Criminal Procedure Code, 1973 before the Sessions Court. The learned Sessions Court rejected the application by order dated 10th November 2022. Aggrieved thereby, the applicant has filed present anticipatory bail application.

4. Learned advocate for the applicant submitted that the applicant has not been named in the first information report. He has been falsely implicated. The prohibited substances have been seized and, therefore, custodial interrogation of the applicant is not necessary. He submitted that he is ready to cooperate with the investigation.

5. Per contra, learned APP submitted that the applicant is in the business of supplying prohibited substances. It is necessary to unearth traces of larger supply of banned substances. He submitted that the Single Judge of this Court in case of Sagar Sadashiv Kore v. State of Maharashtra, reported in 2021 SCC OnLine Bom 6568 and in Ankush v. State, thr PSO, reported in 2020 SCC OnLine Bom 11384 refused to grant pre-arrest protection to the applicants therein having similar role attributed to the applicants therein.

6. I have considered the submissions on behalf of both the sides. Prima facie, the statement of the person from whom prohibited substance was seized has named the applicant as supplier. Considering the nature of allegations against the applicant, it is necessary that detailed investigation as regards possibility of existence of any racket operating in prohibited 12-aba3300-2022.doc substance needs to be investigated. It is also necessary to investigate source of such supply and acquisition. It is also necessary to investigate into the names and identity of purchasers of the prohibited substance from the applicant.

7. Learned Single Judge of this Court in Ankush (supra) in paragraph 8 observed thus:

"8. It is not in dispute that Gutka (chewing tobacco made from crushed areca nut, tobacco, catechu, paraffin wax, slaked lime etc.) and Pan Masala (combination of betel leaf and areca nut with or without tobacco) are seriously detrimental to health and the consumption thereof is identified as a major cause of oral cancer. The said products contain carcinogens and are known to be highly addictive. The State Government has exercised, from time to time, the statutory power under the FSS Act to prohibit the manufacture, storage, distribution and transport or sale of tobacco, whether flavoured, scented or mixed with other ingredients such as nicotine, menthol etc."

8. The coordinate Bench has relied upon an unreported judgment of the Division Bench of this Court (Aurangabad Bench) in the case of Zahir Ibrahim Panja v. State of Maharashtra in Criminal Application No.4968 of 2016.

9. Therefore, in my opinion, considering the allegations against the applicant, no case for grant of pre-arrest protection is made out.

10. The anticipatory bail application is, therefore, rejected. No costs.

(AMIT BORKAR, J.)