

# Sheikh Gaffar Sheikh Nijamoddin vs State Of Mah. Thr. Pso, Ps, Arni, Tq. ... on 30 January, 2024

2024:BHC-NAG:1201

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH : NAGPUR  
CRIMINAL APPLICATION (ABA) NO.2 OF 2024

Sheikh Gaffar Sheikh Nijamoddin

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Arni,  
Yavatmal

AND

CRIMINAL APPLICATION (ABA) NO.3 OF 2024

Shahrukh Bashir Khan

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Arni,  
Yavatmal

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Mr. Y. K. Dhande, Advocate for applicants through video conferencing  
Mr. Nikhil Joshi, APP for respondent/State in ABA 2/2024.  
Mr. S. S. Hulke, APP for respondent/State in ABA 3/2024.

COR  
DAT

1. The ap  
the hands  
No.765/2023 registered with Pol  
Yavatmal for the offence punish  
272, 273 and 328 of the Indian  
27(3)(e), 30(2)(a) and 59 of Fo  
The applicants approached this  
anticipatory bail.

2. The ac  
on the basis of report lodged b  
Dande on an allegation that he

(2)

27.aba.2 & 3.2024

from the Police Station, Arni and requested to take action  
against the illegal selling of contraband. On 04.11.2023  
the police personnel of Police Station, Arni have

conducted the patrolling on Borgaon to Arni road, at that time, they have intercepted one white colour Omni vehicle and during interception, they have seized the contraband articles. Some contraband articles are seized from one cattle shed which is obtained by the present applicants on rent. On the basis of said report, police have registered the crime against the present applicants.

3. Learned Counsel Mr. Dhande for the applicants appeared through video conferencing and submitted that as far as the custodial interrogation is concerned, which is not required, as the entire stock is seized by the police during the raid. For interrogation purpose, the applicants are ready to abide all the conditions imposed by this Court. He further submitted that the issue regarding the applicability of Section 328 of the Indian Penal Code is already pending before the Hon'ble Apex Court. In view of that, the applicants be protected by granting anticipatory bail.

4. Learned APP in both the applications have strongly opposed the applications on the ground that the huge quantity of the contraband articles are seized from the car owned by the present applicants and the cattle shed which is obtained by the present applicants on rent. Their custodial interrogation is required. In view of that, their applications deserve to be rejected.

(3)

27.aba.2 & 3.2024

5. After hearing the learned Counsel for the applicants, learned APP for the State and perused the investigation papers. It is not in dispute that the issue regarding the applicability of Section 328 of the Indian Penal Code is pending before the Hon'ble Apex Court. The entire stock is already recovered from the cattle shed as well as from the Car of the present applicants. Learned APP submitted the custodial interrogation is required to ascertain from which place they have procured the said stock. For that purpose, custodial interrogation is not required. The interest of the investigation can be protected by imposing certain conditions on the applicants. In view of that, both the applications deserve to be allowed. Accordingly, I proceed to pass following order.

#### ORDER

(i) Criminal Applications (ABA) No.2/2024 and 3/2024 are allowed.

(ii) The applicant in Criminal Application (ABA) No.2/2024 namely Sheikh Gaffar Sheikh Nijamoddin and applicant in Criminal Application (ABA) No.3/2024 namely, Shahrukh Bashir Khan be released on anticipatory bail in the event of their arrest in connection with Crime No.765/2023 registered with Police Station, Arni, District Yavatmal for the offence punishable under Sections 188, 272, 273 and 328 of the Indian Penal Code and 26(2)(i), 27(3)(e), 30(2)(a) and

59 of Food Safety and Standards Act, on executing PR bond in the sum of Rs.25,000/-

(4) 27.aba.2 & 3.2024 each with one solvent surety in the like amount.

(iii) The applicants shall attend the Police Station once in a week on Sunday between 10.00 a.m. to 1.00 p.m. and shall cooperate with the investigating agency.

(iv) The applicants shall also furnish their cell phone numbers and address with the address proof.

(v) The applicants shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(URMILA JOSHI-PHALKE, J.) Sarkate Signed by: Mr. A.R. Sarkate Designation: PA To Honourable Judge Date: 31/01/2024 16:43:54