

Avinash Balkrishna Bhamre vs State Of Maharashtra on 8 March, 2022

Author: C.V. Bhadang

Bench: C.V. Bhadang

12-a

IN THE HIGH COURT OF JUDICATURE AT BOMBAY CRIMINAL APPELLATE JURISDICTION

CRI. ANTICIPATORY BAIL APPLICATION NO. 629 OF 2022

Avinash Balkrishna Bhamre

..Applicant

Vs.

The State of Maharashtra

..Respondent

Mr. V. V. Gangurde, for the Applicant.

Mr. N. B. Patil, APP for the Respondent / State.

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P.C.

. The Applicant, apprehending arrest, in connection with investigation of Crime No.140/2021 of Police Station Pimpalgaon Baswant, Tal. Niphad, District Nashik, under Section 179, 188, 272, 273 and 328 of IPC and Section 26(2)(i), 3(1)(zz)(v), 27(3)(d)(e) r/w. Section 59 of the Food Safety and Standards Act, 2006, is seeking anticipatory bail.

2. The aforesaid crime is registered on the basis of the dated 9 December 2021 lodged by Rajendra Dattatray Suryawanshi, the Food Safety Officer, Nashik. According to the informant on 9 December 2021, inspection was taken of M/s. Rajendra Kirana Shop

Mamta Kale

page 1

at Shanti Park Apartment, Chinchkhed Road, Shivaji Nagar, Pimpalgaon, Taluka Niphad, District Nashik, of the Applicant. Further according to the informant, there was a goods vehicle standing outside the shop bearing No.MH15-HH-1198. In a search of the shop and the said vehicle, Scented Tobacco and Pan Masala products, which are banned, have been recovered worth Rs.1,26,159/- (Rs.35,079/- from the shop and Rs.61,080/- from the vehicle).

3. The learned counsel for the Applicant submitted that the only section which is non bailable is Section 328 of IPC. 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 1(1994) 6 Supreme Court Cases 535

Mamta Kale

page 2 of 4

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an order dated 21 September 2021 has granted interim protection to the Petitioner therein.

4. Learned APP seeks time to examine and go through the judgments on which the reliance is placed on behalf of the Applicant and then to make appropriate submissions to further assist the Court.

5. 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. Hence, the following order is passed.

ORDER

(i) In the event of his arrest in connection with investigation of Crime No.140/2021 of Police Station Pimpalgaon Baswant, Tal. Niphad, District Nashik, the Applicant Avinash Balkrishna Bhamre, 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 15/3/2022 and 16/3/2022 between 11.00 a.m. to 1.00 p.m. and as and when directed by the Investigating Officer.

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

(iv) This order shall remain in force till next date. Stand over to 1 April 2022.

C.V. BHADANG, J.

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page 4 of 4