

# Rasulbhai @ Rafiq Gaffar Memon vs The State Of Maharashtra And Another on 3 April, 2023

**Author: R.G. Avachat**

**Bench: R.G. Avachat**

ABA-1744-22.od

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1744 OF 2022

Dhananjay Subhash Bhujadi ..APPLICANT  
VERSUS  
State of Maharashtra and Another ..RESPONDENTS  
.....  
Mr. R.R. Karpe, Advocate for applicant  
Mr. A.S. Shinde, APP for respondents  
.....

WITH  
ANTICIPATORY BAIL APPLICATION NO. 1333 OF 2022

Sayyad Jamir Sayyed Isak ..APPLICANT  
VERSUS  
State of Maharashtra ..RESPONDENT  
.....  
Mr. S.S. Gangakhedkar, Advocate for applicant  
Mr. A.S. Shinde, APP for respondent  
.....

WITH  
ANTICIPATORY BAIL APPLICATION NO. 1681 OF 2022

Bisti Nisar Abdul Gaffar ..APPLICANT  
VERSUS  
State of Maharashtra and Another ..RESPONDENTS  
.....  
Mr. Shaikh Tarek Mobin H., Advocate for applicant  
Mr. A.S. Shinde, APP for respondents  
.....

WITH  
ANTICIPATORY BAIL APPLICATION NO. 1735 OF 2022

Ayyaz Ismail Shaikh ..APPLICANT  
VERSUS

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WITH

ANTICIPATORY BAIL APPLICATION NO. 1737 OF 2022

1. Dyneshwar Madhavrao Munde

2. Jahagirdar Zahid Mir Murtuza Ali

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....

Mr. Hamzakhan I. Pathan, Advocate For applicant

Mr. A.S. Shinde, APP for respondents

....

WITH

ANTICIPATORY BAIL APPLICATION NO. 1677 OF 2022

Navid Malik Tamboli

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....

Mr. Satej S. Jadhav Advocate For Applicant

Mr. A.S. Shinde, APP for respondents

....

WITH

ANTICIPATORY BAIL APPLICATION NO. 1542 OF 2022

Anil Prakash Shrugare

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....

Mr. Angad L. Kanade Advocate For Applicant

Mr. A.S. Shinde, APP for respondents

....

WITH

ANTICIPATORY BAIL APPLICATION NO. 1580 OF 2022

Shaikh Kaif Ahmed Nazir Ahmed

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

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....  
Mr. Sohail Subhedar, Advocate h/f Mr. Nilesh S. Ghanekar Advocate For  
applicant  
Mr. A.S. Shinde, APP for respondents  
....

WITH  
ANTICIPATORY BAIL APPLICATION NO. 1589 OF 2022

Rasulbhai @ Rafiq Gaffar Memon ..APPLICANT  
VERSUS  
State of Maharashtra and Another ..RESPONDENTS  
....  
Mr. Shrikant G. Kawade Advocate For applicant  
Mr. A.S. Shinde, APP for respondents

....  
WITH  
ANTICIPATORY BAIL APPLICATION NO. 1694 OF 2022

Sandip Sundarrao Khade ..APPLICANT  
VERSUS  
State of Maharashtra and Another ..RESPONDENTS  
....  
Mr. Sanjay V. Mundhe Advocate For applicant  
Mr. A.S. Shinde, APP for respondents

....  
WITH  
ANTICIPATORY BAIL APPLICATION NO. 1647 OF 2022

Rohit Trimbak Ghodke ..APPLICANT  
VERSUS  
State of Maharashtra and Another ..RESPONDENTS  
....  
Mr. Shashikant E. Shekade, Advocate For applicant  
Mr. A.S. Shinde, APP for respondents

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WITH  
ANTICIPATORY BAIL APPLICATION NO. 1759 OF 2022

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Sanjay @ Pintu Nagnath Yelapure ..APPLICANT  
VERSUS  
State of Maharashtra and Another ..RESPONDENTS  
.....  
Mr. Santosh N. Patne, Advocate For applicant  
Mr. A.S. Shinde, APP for respondents  
.....

WITH  
ANTICIPATORY BAIL APPLICATION NO. 1558 OF 2022

Shaikh Shabbir Shaikh Rajjak ..APPLICANT  
VERSUS  
State of Maharashtra and Another ..RESPONDENTS  
.....  
Mr. Prathiraj A. Dhakane, Advocate h/f S.V. Wakale, Advocate for applicant  
Mr. A.S. Shinde, APP for respondents  
.....

WITH  
ANTICIPATORY BAIL APPLICATION NO. 293 OF 2023

Mosin Mumtaz Pathan ..APPLICANT  
VERSUS  
State of Maharashtra ..RESPONDENT  
.....  
Mr. Mohd. Aseem Mohd. Abdul Kaleem, Advocate for applicant  
Mr. A.S. Shinde, APP for respondent  
.....

WITH  
ANTICIPATORY BAIL APPLICATION NO. 312 OF 2023

Vinod Chhabu Tonde ..APPLICANT  
VERSUS  
State of Maharashtra and Another ..RESPONDENTS  
.....  
Mr. R.R. Karpe, Advocate for Applicant  
Mr. A.S. Jagatkar, APP for respondents  
.....

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CORAM : R.G. AVACHAT, J.

DATE : 03rd APRIL, 2023 PER COURT :

1. All these applications under Section 438 of Code of Criminal Procedure are being decided by this common order since the applicants therein claim to have an apprehension of being arrested in similar crimes registered against them for the offences punishable under Sections 328, 188, 272, 273 and 179 read with Section 34 of the Indian Penal Code and under Sections 3(1)(zz)(iv), 26(2)(i), 26(2)(ii), 26(2)(iv), 26(3)(d), 27(3)(d), 27(3)(e), 30(2)(a), 12 and 59 of the Food Safety and Standards Act, 2006.

2. From perusal of these applications it appears to be the case of the prosecution that gutkha, pan masala, chewing tobacco, scented supari, etc. came to be seized either from some of the applicants or from the house and/or the shed attached to the house, car or any other transport vehicle belonging to the applicants. In some of the cases, those articles came to be seized from some of the applicants, who run grocery shop. In some of the cases, the accused from whom these articles came to be seized, gave names of some of the applicants herein. As such, the prosecution case in short is that the applicants stored, transported and possessed the aforesaid contraband articles.

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3. Learned counsel for the respective applicants would submit that almost all the applicants have been protected by interim orders passed in the respective applications either in October, November or December of the last year. The applicants have appeared before the investigating officers and co-operated in the investigation. All the offences, except offence punishable under Section 328 of the I.P.C., are bailable one. According to learned counsel, from the facts and circumstances of each case, it would be doubtful as to whether Section 328 of the I.P.C. really gets invoked. It was also submitted that from two different orders passed by this Court, the matters have reached the Apex Court. In one of the matters, the Division Bench of this Court took a view that Section 328 of the I.P.C. gets attracted. However, the other Division Bench took a contrary view. It has been submitted that both these orders have been stayed by the Apex Court in two different special leave petitions. Learned counsel ultimately urged for grant of the applications.

4. Learned A.P.Ps. would, on the other hand, submit that State of Maharashtra has banned storage, transport and sale of gutkha, pan masala, chewing tobacco, scented supari, etc. as these articles are found to be injurious to the health of an individual. It has also been contended that Section 328 of the I.P.C. gets invoked in all these applications. According to learned A.P.Ps., custodial interrogation of the applicants is necessary to find ABA-1744-22.odt out from whom they have obtained these

contraband articles. He would further submit that from their interrogation it may be found as to whether these contraband articles even manufactured in the State of Maharashtra. According to him, in some of the cases, the seized quantities are more than worth Rs.17 lakhs, while in another case it is Rs.13,000/-. Learned A.P.Ps. ultimately urged for rejection of the applications.

5. Considered the submissions advanced. Perused the First Information Report ("F.I.R.") and related papers. As stated above, the contraband articles, quantity of which is worth from Rs.13,000/- to little over Rs.17 lakhs, came to be seized either from the house, shed adjoining the house, car, transport vehicle or a shop of the applicants. By seizure of these articles, the applicants got a lesson since they have necessarily suffered a monetary loss, as the contraband articles are not likely to be returned to them. The applicants have been protected since October, November and December, 2022. They have appeared before the investigating officers. It appears that names of some of the applicants have been figured in statements of the co-accused. There is nothing more than that to implicate them in the crime. It also appears that in some of the cases the persons found in possession of those contraband articles are alleged to have fled no sooner their vehicles were intercepted by the raiding party. Be that as it may. All the offences, except offence punishable under Section 328 of the I.P.C., are ABA-1744-22.odtailable one. The contraband articles have already been seized. The Supreme Court is seized with a matter wherein the question involved as to whether Section 328 of the I.P.C. could be invoked. In similar matter the Apex Court has granted anticipatory bail on the ground of lapse of a longer period i.e. 10-12 months from the date of grant of interim protection. In the present case also the applicants have been granted interim protection, although from October, November or December, 2022.

6. For all these reasons this Court is inclined to confirm the orders granting interim anticipatory bail to the applicants herein on the terms and conditions incorporated in those respective orders. All these applications thus stand allowed in aforesaid terms.

( R.G. AVACHAT, J. ) SSD