

Sagar Balasaheb Nevase vs The State Of Maharashtra on 22 June, 2023

Author: Amit Borkar

Bench: Amit Borkar

2023:BHC-AS:16969

41-aba5

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.568 OF 2023

Sagar Balasaheb Nevase	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Nilesh R. Dalal for the applicant.
Mr. Amit A. Palkar, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JUNE 22, 2023

P.C. :

1. The applicant in Anticipatory Bail Application is seeking relief under Section 438 of the Criminal Procedure Code, 1973 in connection with C.R. No.142 of 2022 registered with Mahad City police station for the offence punishable under Sections 188, 273, 326 of the Indian Penal Code read with Sub-Rule 2, 3, 4 of the Food Safety and Standards (Prohibition of Restriction on Sales) Regulation 2011, Sub-Rule 3, 1, 7 of the Food Safety and Standards (Food Product Standards and Food Additives) Regulations 2011 and Sections 26(1), 26(2)(i)(iv), 27(3)(2), 27(3)(d) and 59 of the Food Safety and Standard Act, 2006.

2. The case of the prosecution in short is that on 1 November 2022 at about 8.00 p.m., they raided Om Shivsai Pan Corner situated at Mahad City and seized contraband articles. The co-

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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 3 February 2023. 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. According to him, there is no material to show that the applicant has administered contraband substance. The victim is unidentified. The prohibited substances has been seized and, therefore, custodial interrogation of the applicant is not necessary. 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 coordinate Benches 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 and unreported judgment of this Court in Anticipatory Bail Application No.483 of 2021 (Mohammed Ali Raheman Alias MohammedAli Abdul Raheman Shaikh v. The State of Maharashtra) decided on 24 March 2021 refused to grant pre-arrest protection to the applicants therein having similar role attributed to the applicants therein.

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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 named the applicant as supplier. Considering the nature of allegations against the applicant, it is necessary that detailed investigation as regards existence of any racket operating in prohibited substance need 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 applicants. The applicant has "caused it to be taken by a person", therefore, identity of victim is not necessary for deciding application under Section 438 of the Criminal Procedure Code, 1973.

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 41-aba568-2023.doc 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.

11. At this stage, learned advocate for the applicant prayed for grant of ad-interim relief as the Sessions Judge had protected him during pendency of the application. Considering the nature of allegations, ad-interim relief granted earlier shall continue for a period of two weeks from today.

(AMIT BORKAR, J.)