

# Sohel Aslam Shaikh vs The State Of Maharashtra on 16 April, 2021

**Author: Prakash D. Naik**

**Bench: Prakash D. Naik**

19-ABAST-7246- 2021.do

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION (ST.) NO. 7246 OF 2021

Sohel Aslam Shaikh ... Applicant

Versus

The State of Maharashtra ... Respondent

.....  
Mr. Balasaheb Deshmukh, Advocate for the Applicant.  
Mr. R. M. Pethe, APP for the Respondent - State.  
.....

CORAM : PRAKASH D. NAIK, J.  
DATE : 16th APRIL, 2021

PER COURT:

1. This is an application for anticipatory bail in C.R. No. 28 of 2021 registered with Indapur Police Station, Pune Rural for offences under Sections 188, 272, 273, 328 of Indian Penal Code and Sections 26 & 30(2)(a), 26(2)(v) of Food Safety and Standards Act, 2006.

2. The case of the prosecution is that, information was received by the Police that, person named Soheli Aslam Shaikh has stored the stock of Gutkha for sale. They proceeded towards the

place where it is stored. They noticed Soheli Shaikh and Wasim Shaikh at the place of storage. They were called by Police. They did

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1 of 4

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not stop and fled from the place. Police went to house of Wasim. Thereafter, the police went to the place where Soheli was noticed by them. They found stock of 74 packets of Vimal Kesar Gutkha, 8 Packets of Vimal Gutkha, 20 packets of Tobacco, 47 packets of V-1 Tobacco, 9 packets of V-1 Tobacco. The total value of packets was Rs.18,073/-.

3. The applicant preferred application for anticipatory bail before Sessions Court which has been rejected vide order dated 19th March, 2021.

4. Learned counsel for the applicant submitted that, except Section 328 of IPC all the offences are bailable in nature. Section 328 is not attracted in this case. It is not the case of the prosecution that the applicant was involved in administering the recovered substance and did not cause it to be consumed by any person. The required ingredients to constitute the said offence are absent. It is further submitted that place from where the Gutkha was found does not belong to the applicant. Applicant has been implicated merely on

suspicion. Custodial interrogation of applicant is not necessary.

Circular dated 11th March, 2021 was issued by Special IGP that Section 328 should not be invoked, in view of decision of Aurangabad Bench of this Court.

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2 of 4

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5. Learned App submitted that huge quantity of Gutkha was found. Section 328 of IPC is clearly attracted in this case. The requirement of said provision is either a person administers or causes to be taken by any person the substance referred to therein. Involvement of applicant is matter of record.

6. I have perused the FIR. Undisputedly, 74 packets of Vimal Kesar Gutkha, 8 Packets of Vimal Gutkha, 20 packets of Tobacco, 47 packets of V-1 Tobacco, 9 packets of V-1 Tobacco was found at the place of incident. It is the case of the prosecution that information was received about the storage of Gutkha by applicant. The applicant was present at the scene of offence. On noticing police, he escaped from the place.

7. The primary contention of the applicant is that all offences are bailable except Section 328 of IPC which is not attracted. This Court in several matters has dealt with the issue of

applicability of Section 328 of IPC. Vide order dated 6 th November, 2020 passed in Anticipatory Bail Application (St.) No. 2451 of 2020 it is held that, "Causation" means action of causing something causing its movement by transporting or storing it with intent to reach to end user are events in sequence caused by active participation of intermediate agencies or persons. Section 328 would

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3 of 4

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attract. Similar view was taken by this Court in Anticipatory Bail Application No. 313 of 2021 vide order dated 8 th February, 2021. On reading the provision of Section 328 of IPC, prima facie it can be seen that the same is attracted. Considering these circumstances, no case for grant of anticipatory bail is made out.

ORDER

Criminal Anticipatory Bail Application (St.) No. 7246 of 2021 is rejected and stands disposed of accordingly.

(PRAKASH D. NAIK, J.)

Sajakali Jamadar

4 of 4

