

# Vikas Umakant Chaudhary vs The Sr. Police Inspector And Anr on 29 June, 2022

**Author: Bharati Dangre**

**Bench: Bharati Dangre**

1/4

42 BA-782-22.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
BAIL APPLICATION NO.782 OF 2022

Vikas Umakant Chaudhary .. Applicant

Versus

The Sr.Police Inspector & Anr. .. Respondents

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Mr.Vivek B. Pandey with Ms.Jaya Sharma, Mr.Ashish Singh,  
Mr.Ayush Tiwari, Mr.Arun Gupta i/b Mr.Arun Gupta for the  
Applicant.

Ms.Anamika Malhotra, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.

DATED : 29th JUNE, 2022

P.C:-

1. Heard learned counsel for the applicant and learned

A.P.P. for the State.

2. The applicant is charge-sheeted in C.R.No.I-856 of 2021

registered with Navghar Police Station for the offences

punishable under Sections 328, 188, 273 read with 34 of the

Indian Penal Code and under Sections 26(2)(iv), 30(2)(a) of

Food Safety and Standard Act, 2006. He came to be arrested

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2/4

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42 BA-782-22.doc

in connection with the said C.R. on 14/12/2021 and, since then, he is incarcerated.

3. On 14/12/2021, the complainant received an information that prohibited articles have been stored in Gala No.13/A, Jai Ambe Apartment, Bhayander (E). A raid was conducted and they found one Bansaraj Yadav present in the premises. On search, Vimal Supari Pan Masala, scented tobacco worth Rs.17,888/- found in the said premises. Said Bansaraj Yadav informed that one Vikas Chaudhary (present applicant), is supplying the said contraband articles. On such information being supplied, police alongwith panchas reached Dahisar check post where they found the applicant alongwith his vehicle. During search, the vehicle found containing contraband worth Rs.2,64,600/-. On further interrogation, the applicant disclosed that he has kept contraband articles i.e. tobacco and panmasala worth Rs.3,64,888/- in his house. The panchanama was carried out and the prohibited substance came to be seized. The applicant came to be arrested and since then, he is behind the bars.

4. Barring the offence u/s.328 of the IPC, all other offences are bailable. The position of law whether an offence under

Section 328 gets attracted when the prohibited substance, is

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3/4

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42 BA-782-22.doc

transported or supplied, but it is caused to be consumed is  
attracted or not, till date, is not crystallized.

A decision of the Division Bench of this Court in case of  
Anand Ramdhani Chaurasiya & Anr Vs. The State of  
Maharashtra [(2019) SCC Online Bombay 1857], where a view  
was taken that Section 328 IPC could not have been invoked,  
has been stayed by the Hon'ble Apex Court. However, in  
Special Leave Petition No.843 of 2021 Mohd. Ali Rehman @  
Mohammed Ali Abdul Raheman Shaikh Vs. State of  
Maharashtra, the Hon'ble Apex Court, on 13/11/2021 took  
note of the pending matter before it, in regards to invocation of  
Section 328 of the IPC. The Special Leave Petition is directed  
to be tagged with the Special Leave Petition filed by the State of  
Maharashtra in case of Anand Chaurasiya (supra). The  
Hon'ble Apex Court has directed the Investigating Officer not  
to arrest the petitioner subject to he rendering co-operation.

5. Considering the conundrum of the applicability of  
provisions of Section 328 in a situation like this, and since the  
issue is pending before the Hon'ble Apex Court, pursuant to  
the view of the Division Bench of this Court and since  
judgment of the Division Bench taking a view that it cannot be

invoked, has been stayed, the following order is passed.

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4/4

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: ORDER :

(a) Application is allowed.

(b) Applicant -Vikas Umakant Chaudhary shall be

released on bail in connection with C.R.No.I-856 of 2021 registered at Navghar Police Station on furnishing P.R. Bond to the extent of Rs.50,000/- with one or two sureties of the like amount.

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.

(d) The Applicant shall attend the trial on regular basis, unless specifically exempted by the trial Court.

( SMT. BHARATI DANGRE, J.) M.M.Salgaonkar