

Nagesh Rajshekhar Mense vs State Of Maharashtra on 3 January, 2023

Author: Prakash D. Naik

Bench: Prakash D. Naik

Common Order-ABA-799-2022 and ors.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 799 OF 2022

Nagesh Rajshekhar Mense	...Applicant
Versus	
The State of Maharashtra	...Respondent

AND
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2913 OF 2021

Jafar Baig Rauf Baig Mirza	...Applicant
Versus	
The State of Maharashtra	...Respondent

AND
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1648 OF 2022

Santosh Laxman Gaikwad	...Applicant
Versus	
The State of Maharashtra	...Respondent

AND
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 522 OF 2022

Pravin Prakash Kadam	...Applicant
Versus	
The State of Maharashtra	...Respondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2259 OF 2022

Arif Kasim Inamdar	...Applicant
Versus	
The State of Maharashtra	...Respondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2379 OF 2022

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AND

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 781 OF 2022

1. Siddharam Hanmant Koli

2. Arun Hanmant Koli

...Applicants

Versus

The State of Maharashtra

...Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 782 OF 2022

Santosh Shrishail Birajdar

...Applicant

Versus

The State of Maharashtra

...Respondent

AND

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 461 OF 2022

Santosh Vishnu Relekar

...Applicant

Versus

The State of Maharashtra

...Respondent

AND

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 156 OF 2022

Padmakar Narhari Tandulkar

...Applicant

Versus

The State of Maharashtra

...Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 511 OF 2022

Ajij Noor Mahamad Momin

...Applicant

Versus

The State of Maharashtra

...Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 189 OF 2022

Chandrakant Jyotiram Kshirsagar

...Applicant

Versus

The State of Maharashtra

...Respondent

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AND

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 193 OF 2022

Imran Shamshad Ansari	...Applicant
Versus	
The State of Maharashtra	...Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 419 OF 2022

Kaiyyum Shakir Ansari	...Applicant
Versus	
The State of Maharashtra	...Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2620 OF 2022

1. Parvez Ansari	
2. Nafees Ansari	...Applicants
Versus	
The State of Maharashtra	...Respondent

AND

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 667 OF 2022

Chandrashekhar Iranna Vastrad	...Applicant
Versus	
The State of Maharashtra	...Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 314 OF 2022

Nilesh Harakchand Lalwani	...Applicant
Versus	
The State of Maharashtra	...Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2595 OF 2021

Ankur Sunil Gupta	...Applicant
Versus	
The State of Maharashtra	...Respondent

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AND

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1833 OF 2022

Barikarav Pandurang Mote	...Applicant
Versus	
The State of Maharashtra	...Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2112 OF 2022

1. Bhiwa Shankar Vyandade	
2. Bhagwant Bhiwa Vyandade	...Applicants
Versus	
The State of Maharashtra	...Respondent

AND

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 892 OF 2022

Pooja Krushnamurari Gupta	...Applicant
Versus	
The State of Maharashtra	...Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2519 OF 2022

Raju Vachunuri S/o Vachunuri Raja Komaraiah	...Applicant
Versus	
The State of Maharashtra	...Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2518 OF 2022

Krishnamurari @ Kallu Rajendra Gupta	...Applicant
Versus	
The State of Maharashtra	...Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 483 OF 2022

Nemaram Alias Naresh Laburam Devasi	...Applicant
Versus	
The State of Maharashtra	...Respondent

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AND

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2761 OF 2021

Khalid Hamid Hatture ...Applicant

Versus

The State of Maharashtra ...Respondent

AND

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2737 OF 2021

Rafiz Chand Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

AND

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 532 OF 2022

Naresh Mangilal Choudhary ...Applicant

Versus

The State of Maharashtra ...Respondent

AND

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 226 OF 2022

Arun Raosaheb Khot ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 321 OF 2022

Sarfrazaddin Mohammad Yunus Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

AND

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2931 OF 2022

Mayank Raju Patil ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Raja Thakare i/by Mr. Gopal N. Parab, Advocate for Applicant in A.B.A. No. 799 of 2022
Mr. A.A. Palkar, APP, for Respondent - State in A.B.A. No. 799 of 2022.

Mr. Mahendra N. Sandhyanshiv, Advocate for Applicant in A.B.A. No. 2913 of 2021.
Mr.A.A.Palkar, APP, for Respondent - State in A.B.A. No. 2913/2021.

Mr. Rupesh A. Zade, Advocate for Applicant in A.B.A. No. 1648/2022.
Mr. A.A. Palkar, APP, for Respondent - State in A.B.A. No. 1648/2022.

Mr. Veerdhval Kakade, Advocate for Applicant in A.B.A. No.522/2022/ 2259/2022 and 2379/2022.
Mr. A.A.Palkar, APP, for Respondent - State in A.B.A. No.522/2022/ 2259/2022 and 2379/2022.

Mr. Aniket Nikam a/w Mr. Amit Icham i/by Mr. Vivek Arote for the Applicant in ABA No.2866/2021.
Mr. A.A. Palkar, APP, for Respondent - State in A.B.A. No. 2866/2022.

Mr. Abhishek Kulkarni, Advocate for Applicant in A.B.A. No. 2993/2021
Mr. A.A.Palkar, APP, for Respondent - State in A.B.A. No. 2993/2021.

Mr. V. V. Gangurde, Advocate for Applicant in A.B.A. No. 629/2022.
Mr.A.A.Palkar, APP, for Respondent - State in A.B.A. No.629/2022.
Mr. Rui Danawala i/by Mr. Umesh R. Mankapure, Advocate for Applicant in A.B.A. Nos.2590/2021, 531/2022, 3023/2021.
Mr. A.A.Palkar, APP, for Respondent - State in A.B.A. Nos.2590/2021, 531/2022, 3023/2021.

Mr. Ritesh Thobde, Advocate for Applicant in A.B.A. No. 781/2022, 782/2022
Mr. A.A. Palkar, APP, for Respondent - State in A.B.A. No.781/2022, 782/2022.

Mr. Priyal G. Sardas, Advocate for Applicant in A.B.A. No.461/2022
Mr. A. A. Palkar, APP, for Respondent - State in A.B.A. No. 461/2022.

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Mr. Prashant S. Hagare, Advocate for Applicant in A.B.A. Nos. 156/2022, 511/2022 & 189/2022.

Mr. A. A. Palkar,, APP, for Respondent - State in A.B.A. Nos. 156/2022, 511/2022 & 189/2022.

Mr. Kuldeep S. Patil i/by Ms. Saili N. Dhuru, Advocate for the Applicant in ABA no.193/2022 and 419/2022

Mr. A. A. Palkar,, APP, for Respondent - State in ABA no.193/2022 and 419/2022.

Mr. Imran Shaikh, Advocate for Applicant in A.B.A. No. 2620/2022.

Mr. N.B.Patil, APP, for Respondent - State in A.B.A. No. 2620/2022.

Mr.V.V. Purwant, Advocate for Applicant in A.B.A. No.667/2022.

Mr.N.B. Patil, APP, for Respondent - State in A.B.A. No. 667/2022.

Mr. Tushar Sonawane, Advocate for Applicant in A.B.A. Nos.314/2022 & 2595/2022.

Mr. A.A.Palkar, APP, for Respondent - State in A.B.A. Nos.314/2022 & 2595/2022.

Mr. Rajaram V. Bansode, Advocate for the Applicant in ABA Nos.833/2022 & 2112/2022.

Mr. A.A.Palkar, APP, for Respondent - State in ABA Nos.833/2022 & 2112/2022.

Mr. Vimal Kumar Patwa a/w Mr. Pranav Pokhale a/w Mr. Tanmay Karwa Advocate for Applicant in A.B.A. Nos. 892/2022, 2519/2022, 2518/2022, 483/2022.

Mr. P.N. Dabholkar, APP, for Respondent - State in A.B.A. Nos. 892/2022, 2519/2022, 483/2022.

Mr. N.B.Patil, APP, for Respondent - State in A.B.A. No. 2518/2022.

Mr. Rahul B. Vijaymane, Advocate for Applicant in A.B.A. No. 2761/2021.

Mr.A.A. Palkar, APP, for Respondent - State in A.B.A. No. 2761/2022.

None for Applicant in A.B.A. No. 2737/2021.

Ms. P. N.Dabholkar,APP, for Respondent-State in A.B.A.No.2737/2021.

Mr. Kushal Mor a/w Mr. Kunal Bilanay, Advocate for Applicant in A.B.A. No.532/2022.

Ms. P. N. Dabholkar, APP, for Respondent - State in A.B.A. No. 532/2022.

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Ms. Sana Raees Khan a/w Mr. Aditya Parmar i/by Hulyalkar,

Advocate for Applicant in A.B.A. No. 226/2022 & 321/2022.

Mr. A.A. Palkar, APP, for Respondent - State in A.B.A. No. 226/2022 & 321/2022.

Shri. Shreyas P. Baraswade, Advocate for Applicant in A.B.A.

No.2931/2022

Mr. N.B.Patil, APP, for Respondent - State in A.B.A. No.2931/2022.

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CORAM	:	PRAKASH D. NAIK, J.
RESERVED ON	:	3rd OCTOBER, 2022,
		4th OCTOBER, 2022,
		6th OCTOBER, 2022,
		10th OCTOBER, 2022,
		19th OCTOBER, 2022.

PRONOUNCED ON	:	3rd JANUARY 2023.
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COMMON ORDER:

1. These applications are preferred under Section 438 of Code of Criminal Procedure (for short "Cr.P.C.") seeking anticipatory bail in connection with First Information Reports (for short "FIR") for the offences under Sections 26(2)(iv), 27(3)(d), 27(3)(c), 30(2)(a) and Sections 3, 59 of the Food Safety and Standards Act, 2006 (for short "FSS Act") and Sections 188, 272, 273, 328 Indian Penal Code (for short "IPC").

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2. Since common issues are involved in all these applications, they were heard together and disposed off by common order.

3. The common grounds urged in these applications seeking anticipatory bail are as follows :

i) Except Section 328 of IPC all the other offences are bailable in nature.

ii) The offence under Section 328 of IPC is not attracted and applicable in the present cases.

iii) Custodial interrogation of the applicants is not necessary.

4. Learned Advocate in ABA No. 799 OF 2022 submitted that, the applicant is apprehending arrest in C.R. No. 579 of 2021 registered with Jodbhavi Police Station for offences under Sections 188, 272, 273, 328 of IPC and Section 59 of FSS Act. It is submitted that, the applicant was not found in possession of any article. Co-accused has been arrested and granted bail. The applicant is arrested on the basis of statement of co-accused. The applicant was named in the remand application for the

first time. Section 328 of IPC is not applicable. The co-accused was arrested and granted bail. Reliance is placed on the order dated 11.08.2021 Sajakali Jamadar 10 of 66 Common Order-ABA-799-2022 and ors.doc passed by this Court in ABA No.1756 of 2021 and ABA No.1757 of 2021, wherein pre-arrest bail was granted to the applicants therein on the ground that their custodial interrogation is not necessary.

Learned APP submitted that the offence is of serious nature. The involvement of the applicant was disclosed during interrogation of co-accused. Section 328 of IPC is attracted. The applicant is absconding. Custodial interrogation of the applicant is necessary. Investigation is in progress. Co-accused were found in possession of banned Gutkha and other materials. During inquiry with the arrested accused it was revealed that the applicant and others had provided banned Gutkha and other material for selling the material to public at large. Learned APP Mr. Palkar relied upon the decision of this Court dated 23.12.2021 passed in ABA No.1405 of 2021 and other group of matters.

5. Learned Advocate appearing for applicant in ABA No.2913 of 2021 submitted that, the applicant is apprehending arrest in C.R. No.378 of 2021 registered with Manmad City Police Station, Manmad for offences under Section 179, 188, 272, 273 & 328 of IPC as well as Section 26(2)(i), 26(2)(iv), 59 & 27(2)(e) of FSS Act. It is submitted that the FIR in this case was registered on 10.11.2021. Although the raid was conducted on 08.10.2021, Sajakali Jamadar 11 of 66 Common Order-ABA-799-2022 and ors.doc there is delay in lodging FIR. False complaint is lodged against the applicant. Custodial interrogation of the applicant is not necessary. Section 328 of IPC is not attracted. Investigation is completed.

Learned APP submitted that, no ground is made out for grant of anticipatory bail. The delay has been explained in the FIR. The applicant was arrested for offence under Section 326 of IPC. The effect of delay can be considered during trial. There are specific allegations against the applicant that he has stored contraband articles i.e. Rajniwas Panmasala packets flavoured Tobacco mix and various other packets. The purpose of storing of contraband articles in the grocery shop is for sale. Therefore articles are hazardous to consume. Custodial interrogation of the applicant is necessary. Section 328 of IPC is attracted. The issue is already dealt with by this Court.

6. Learned Advocate in ABA No.1648 of 2022 submitted that, the applicant is apprehending arrest in C.R. No.285 of 2022 for offences under Sections 328, 188, 272, 273 of IPC and Sections 26(2)(iv), 27, 30(2), 31 and 59 of FSS Act. It is submitted that, except Section 328 of IPC all the other offences are bailable in nature. Section 328 of IPC is not attracted. Reliance is placed on the decision of the Hon'ble Supreme Court in the Joseph Kurian Sajakali Jamadar 12 of 66 Common Order-ABA-799-2022 and ors.doc Philip Jose Vs. State of Kerala, (1994) 6 SCC 535. It is submitted that the apex Court has granted interim relief in similar matter. In the case of Nipul Nagde Vs. The State of Maharashtra vide Special Leave Petition No.6788 of 2021 dated 21.09.2021 wherein it was observed that, different Benches of this Court have granted interim protection to the similarly placed persons. Reliance is also placed by the order passed by the Single Bench (V. G. Bisht J.) of this Court dated 30.09.2021 passed in ABA No.944 of 2020 and other connected matters.

Learned APP submitted that, merely on the ground of grant of interim relief in various other matters by the apex Court, no relief under Section 438 of Cr.P.C. can be granted. Section 328 of IPC is attracted in this Case. The applicant is involved in this case. On 10.06.2022, information was received by the Police that, the applicant has made illegal storage of Panamasala and Gutkha and he is about to sale it someone. The applicant jumped from the vehicle and ran away. Gutkha worth Rs.13,08,800/- was seized from the vehicle. Custodial interrogation of the applicant is necessary.

7. Learned Advocate for the applicant in ABA No.522 of 2022 submitted that, the applicant is apprehending arrest in C.R. Sajakali Jamadar 13 of 66 Common Order-ABA-799-2022 and ors.doc No.808 of 2019 registered with MIDC Police Station, Solapur City on 10.12.2021 for offences under Section 26(2)(i), 26(2)(ii), 26(2)(iv), 27(2)(e), 30(2)(a) and 59 of the FSS Act and Sections 188, 272, 273, 328 of IPC. It is submitted that, the applicant has no connection with the crime. The applicant is sought to be arrested on the statement of accused No.3. Section 328 of IPC is not attracted. The said offences are bailable in nature. Reliance is placed on the order dated 09.02.2022 passed by this Court in ABA No.1467 of 2021, wherein anticipatory bail was granted to the applicant in relation to the offence under Section 328 of IPC.

Learned APP submitted that the investigation revealed that the co-accused brought banned Gutkha from the godown of the applicant. Section 328 of IPC is attracted to this case and the said fact is fortified by this Court in the decision delivered in ABA No.1405 of 2021 dated 23.12.2021 and other connected matters.

8. Learned Advocate for the applicant in ABA No.2259 of 2022 submitted that the applicant is apprehending arrest in C.R. No.276 of 2022 registered with Faujdar Chawdi Police Station, Solapur for offences under Sections 26(2)(i), 26(2)(iv) 27(3)(e), 3 & 59 of FSS Act as well as Sections 188, 272, 273, 328 of IPC. It is submitted that, the custody of the applicant is not necessary.

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Section 328 of IPC is not attracted.

The applicant was not found

in possession of contraband goods. The applicant is involved in the statement of co-accused.

Learned APP submitted that the applicant is involved in crime. Investigation revealed applicant's complicity.

9. Learned Advocate for the applicant in ABA No.2379 of 2022 submitted that the applicant is apprehending arrest in C.R. No.20 of 2022 registered with Mandrup Police Station, Solapur Rural for offences under Sections 328, 188, 272, 273 and 59 of FSS Act. It is submitted that the custodial interrogation of the applicant is not necessary. Section 328 of IPC is not applicable. There is no evidence to show the involvement of the applicant. The co-accused had disclosed that the vehicle

belongs to the applicant. The vehicle in which the Gutkha was found belongs to the applicant. There is no evidence that the goods belong to the applicant.

Learned APP submitted that Gutkha was found in the truck belonging to the applicant. Custodial interrogation of the applicant is necessary. Section 328 of IPC is attracted. The truck was seized by the Police. Panmasala worth Rs.30,52,800/- and Tobacco worth Rs.7,63,200 was found in the vehicle. The driver Sajakali Jamadar 15 of 66 Common Order-ABA-799-2022 and ors.doc and cleaner of the vehicle were apprehended. The applicant is the owner of the vehicle. All of them were transporting Gutkha from the vehicle. Huge amount of banned articles were arrested from the applicant. Hence, custodial interrogation of the applicant is necessary.

10. Learned Advocate for the applicant in ABA No.2866 of 2021 submitted that the applicant is apprehending arrest in C.R. No.770 of 2021 registered with Shirur Police Station, Dist. Pune for offences under Sections 26(2)(i), 26(2)(ii), 26(2)(iv), 27(3)(d), 30(2)(a) of FSS Act and Sections 328, 188, 272, 273 r/w Section 34 of IPC. The FIR was registered on 06.10.2021. It is submitted that there is not involvement of the applicant in the crime. The applicant was not found at the spot of seizure. Section 328 of IPC is not attracted. The applicant is implicated on the basis of the statement of the co-accused. Such statement is not admissible in evidence.

Learned APP submitted that the applicant is involved in the offence. Section 328 of IPC is applicable in this case. Raid was effected on Dairy owned by applicant where co-accused was in possession Gutkha. Raid was conducted on 06.10.2021. Stock of Vimal Pan Masala, Hira Pan Masala, Royal 717 Tobacco, Scented Sajakali Jamadar 16 of 66 Common Order-ABA-799-2022 and ors.doc Tobacco etc. were found at the premises of Amul Dairy owned by the applicant. Muddemal property was being dealt with by employees of the applicant. Custodial interrogation of the applicant is necessary.

11. Learned Advocate in ABA No.2993 of 2021 submitted that the applicant is apprehending arrest in C.R.No.279 of 2021 registered with Talegaon Dabhade Police Station for offences under Section 272, 273, 188, 328 r/w Section 34 of IPC and Section 30(2), 26(2)(i), 26(2)(iv) and 59 of FSS Act. The applicant is not involved in the crime. The applicant is allegedly named by the co-accused. The applicant was not found in possession of contraband. Custodial interrogation of the applicant is not necessary. Section 328 of IPC is not attracted.

Learned APP submitted that the applicant is the main accused in the crime. Custodial interrogation of the applicant is necessary. There are about 1500 calls on mobile phone between applicant and other accused. Contraband was found in two vehicles. Driver of the vehicle and other persons were arrested. During investigation role of the applicant was disclosed. The applicant is used to give contraband articles.

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12. Learned Advocate for the applicant in ABA No.629 of 2022 submitted that the applicant is apprehending arrest in C.R.No.140 of 2021 registered with Pimpalgaon Baswant Police Station, Dist. Nashik for offences under Sections 26(2)(i), 3(1)(zz)

(v), 27(3)(d)(e), r/w Section 59 of FSS Act and Sections 179, 188, 272, 273, 328 of IPC. It is submitted that the applicant was not in possession of Gutkha. Co-accused was arrested on the spot. Articles were recovered from the co-accused. The applicant is implicated on the statement of co-accused.

Learned APP submitted that the offence is of serious nature. Statement of the co-accused involves the applicant. The goods were found in possession of the co-accused. The applicant ran away from the spot. The interrogation of co-accused revealed that the prohibited Gutkha and Panmasala belongs to the applicant. The order passed by the Sessions Court records that the material on record make it clear that the applicant is dealing with Gutkha and Panmasala, though it is prohibited.

13. Learned Advocate for the applicant in ABA No.2590 of 2021 submitted that the applicant is apprehending arrest in C.R. No.339 of 2021, registered with Velapur Police Station, Dist. Solapur for offences under Sections 188, 272, 273, 328 of IPC and Sajakali Jamadar 18 of 66 Common Order-ABA-799-2022 and ors.doc Sections 26(2)(i), 26(2)(iv), 27(3)(e) and 59 of FSS Act. It is submitted that the applicant is not named in the FIR. The applicant is implicated on the basis of co-accused. Such statement is not admissible in evidence. Section 328 of IPC is not attracted. Learned Advocate for the applicant relied upon the interim order dated 21.09.2021 passed by the apex Court in the Special Leave Petition No.6788 of 2021 in the case of Nipul Nagde Vs. The State of Maharashtra, Interim order dated 14.02.2022 passed by the apex Court in the Special Leave Petition No.605 of 2022 in the case of Sheikh Salim Sheikh Gafur and Anr. V/s. The State of Maharashtra. It is submitted that the decision in the case of Anand Ramdhani Chaurasia and Another V/s. State of Maharashtra 2019 SCC Online Bom 1857 is considered by this Court. Reliance is placed on the order dated 08.02.2022 passed by this Court in ABA No.32 of 2022 in the case of Md. Kalim S/o Mohd. Yusuf V/s. The State of Maharashtra.

Learned APP submitted that, this Court vide order dated 23.12.2021 has considered several decisions passed in ABA No.1405 of 2021 and other connected matters and it is held that Section 328 of IPC is attracted in such cases.

14. In connection with ABA No.531 of 2022 it is submitted that, the applicant is apprehending arrest in C.R. No.53 of 2022 Sajakali Jamadar 19 of 66 Common Order-ABA-799-2022 and ors.doc registered with Baramati City Police Station, Dist. Pune for offences under Sections 328, 272, 273, 188 of IPC and Sections 26(2)(iv), 27, 30(2), 31 & 59 of FSS Act. It is submitted that, the applicant is not named in the FIR. He is involved by the co-accused. Goods were seized. Custody of the applicant is not necessary. On applicability of Section 328, learned Advocate made similar submissions as above.

Learned APP submitted that the custody of the applicant is necessary. Information was received that the accused are selling Panmasala and Gutkha. One person was found sitting in the shop. He started running. He was apprehended. Shop and Vehicle was searched. Panmasala and Gutkha were recovered. Investigation is in progress. Accused No.1 has disclosed that he had purchased prohibited articles from the applicant. Huge quantity of prohibited articles was seized. It is submitted that the law relating to applicability of Section 328 of IPC is already settled by this Court.

15. In connection with ABA No.3023 of 2021, the applicant is apprehending arrest in C.R. No.1214 of 2021 registered Sangola Police Station, Dist. Solapur for offences under Sections 188, 272, 273, 328 and Section 59 of FSS Act. Learned Advocate for the Sajakali Jamadar 20 of 66 Common Order-ABA-799-2022 and ors.doc applicant advanced similar submission that Section 328 of IPC is not attracted. It is submitted that, custodial interrogation of the applicant is not necessary.

Learned APP submitted that there is sufficient evidence showing his involvement.

16. Learned Advocate for the applicants in ABA Nos.781 of 2022 and 782 of 2022 submitted that, the applicants are apprehending arrest in C.R. No. 114 of 2022 registered with Akkalkot South Police Station for offences under Sections 26(2)(i), 26(2)(iv), 27(3)(e), 59 of FSS Act and Sections 188, 272, 273, 328 r/w Section 34 of IPC. It is submitted that the applicants are falsely implicated in this case. There is no evidence to show their involvement. Section 328 of IPC is not attracted. There is no recovery from the possession of the applicants. Custody of the applicants is not necessary.

Learned APP submitted that the report was lodged by Food Safety Officer, Solapur on 07.03.2022. He investigated that, seized stock being transported in vehicle. It was Pan masala tobacco and other material. The applicants were intended to sell the banned pan masala, Gutkha and other articles. After registration of FIR, the accused are absconding.

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17. Learned Advocate for the applicant in ABA No.461 of 2022 submitted that the applicant is apprehending arrest in C.R. No.15 of 2022 registered Vairag Police Station, Dist. Solapur for offences under Sections 188, 272, 273, 328 of IPC and Sections 26(2), 26 (2)(iv), 27(3)(e) & 59 of the FSS Act. It is submitted that, Section 328 of IPC is not attracted in the present case. The decision in the case of Ganesh Pandurang Jadhao & Anr. Vs. The State of Maharashtra and Ors. dated 15.10.2020 passed by this Court in Criminal Writ Petition No.1027 of 2015, has not been stayed by the higher Court and the observations made therein are binding on this Court. There was no sale of contraband. The other offences are bailable in nature. Similar issues are pending before the apex Court. Reliance is placed on interim orders passed by the apex Court in some cases.

Learned APP submitted that this Court has already taken a view that Section 328 of IPC is attracted in such cases. Pendency of some matters for grant of some interim relief is not allowing in these applications. The applicant is involved in this case. The offence is of serious nature. Custodial interrogation of the applicant is necessary. Secret Information was received that, Gutkha has been made in tin shed owned by applicant at Village Sajakali Jamadar 22 of 66 Common Order-ABA-799-2022 and ors.doc Shelgaon, Tal. Barshi. Raid was effected and 10 gunny bags containing Gutkha scented tobacco was found. There were 1000 packets of Vimal Pan Masala and 1000 packets of V1 tobacco. The applicant disclosed that he had purchased muddemal from other person.

18. Learned Advocate for the applicants in ABA Nos. 156 of 2022 and 511 of 2022 submitted that the applicants are apprehending arrest in C.R. No.101 of 2021 registered with Indapur Police Station,

Tal Indapur, Dist. Pune for offences under Sections 179 188, 272, 273, 328 of IPC and Sections 30(2)(a), 26(2)(i), 26(2)(iv), r/w Section 59 of the FSS Act. It is submitted that Section 328 of IPC is not attracted. The issue is pending before the apex Court. In several cases interim relief of no coercive action has been passed by the apex Court. Reliance is placed on the decision of this Court (V.G.Bisht, J.) dated 30.09.2021 passed in ABA No.944 of 2020 and other connected matters. It is submitted that the law laid down by the apex Court in the case of Joseph Kurian (supra) is applicable in these type of cases. The single bench in the aforesaid decision has considered the view expressed in the case of Joseph Kurian (supra).

Learned APP submitted that the observations in the decision in the case of in the case of Joseph Kurian (supra) has Sajakali Jamadar 23 of 66 Common Order-ABA-799-2022 and ors.doc been considered by this Court in ABA No.1405 of 2021 and other connected matters vide order dated 23.12.2021. The offence is of serious nature. Custodial interrogation of the applicant is necessary. Both applicants are involved in this crime. The applicants were found in possession of the contraband. Role has been assigned to the applicants.

19. The applicant in ABA No.189 of 2022 seeking pre-arrest bail in C.R. No.1163 of 2021 registered with Indapur Police Station. Tal. Indapur, Dist. Pune for offences under Sections 328, 188 r/w Section 34 of IPC and Sections 26(2), 26(2)(a), 27(3)(d), 27(3)(e) and Sections 59 of FSS Act. Learned Advocate has advanced similar submissions as above on the aspects of applicability of Section 328 of IPC. It is submitted that, since the other offences are bailable, the applicant need not be subjected to custody.

Whereas learned APP reiterated his submissions that Section 328 of IPC is attracted. The applicant's involvement is supported by evidence. The police intercepted vehicle. Accused No.1 was driving the vehicle. He was carrying goods in the vehicle. Search of vehicle resulted in Gutkha, tobacco worth Rs.32,66,080/-. The involvement of the applicant was disclosed. His custodial interrogation is necessary. The applicant is the owner of vehicle.

Sajakali Jamadar 24 of 66 Common Order-ABA-799-2022 and ors.doc

20. The applicant in ABA No.193 of 2022 is apprehending arrest in C.R. No.54 of 2021 registered with Dadar Coastal Police Station, Dist. Raigad for offences under Sections 420, 328, 272, 273 of IPC and Section 59 of the FSS Act. It is submitted that there is no recovery of any Gutkha or Pan Masala from the applicant. The name of the applicant was disclosed by accused No.3 and accused No.4 being stockest supplier of Gutkha and Pan Masala. Section 328 of IPC is not attracted in the present case. Custodial interrogation of the applicant is not necessary. The name of the applicant is not mentioned in the FIR. Learned counsel for the applicant has relied upon the decision of learned Single Judge of this Court (Coram : V.G. Bisht, J) in ABA No.944 of 2020 and other connected matters dated 30-09-2021. In support of his submissions that Section 328 of IPC is not attracted in the present case. Reliance is also placed on order dated 30.09.2021 passed in BA No.3281 of 2021.

Learned APP submitted that on 06.12.2021, the accused Nos.1 to 4 were found in possession of Vimal Pan Masala Gutkha worth Rs.5,27,323/-. The applicant is storing and selling the said

prohibited goods with accused No.4. Custodial interrogation of the applicant is necessary to search the stock of said prohibited goods and seize the same.

Sajakali Jamadar 25 of 66 Common Order-ABA-799-2022 and ors.doc

21. ABA No.419 of 2022 relates to C.R. No.195 of 2021 registered with Alibaug Police Station, Dist. Raigad for offences under Sections 328, 272, 273, 188 r/w Section 34 of IPC and Section 59 of the FSS Act. It is submitted that there is no direct evidence against the applicant. He was not found in possession of any articles. The contraband is already seized. Custodial interrogation of the applicant is not necessary. Section 328 and 272 of IPC are not applicable. Similar legal submissions of applicability of Sections 328 of IPC were advanced and reliance is also placed on the same decisions as aforesaid.

Learned APP has reiterated his submissions that, Section 328 of IPC is attracted. There is sufficient evidence showing involvement of the applicant. Co-accused has named the applicant. Custodial interrogation of the applicant is necessary.

22. Learned Advocate for the applicant in ABA No.2620 of 2022 has submitted that, the applicants are apprehending arrest in C.R. No.135 of 2022 registered with Samarth Police Station, Dist. Pune, for offences under Sections 188, 272, 273, 328 r/w Section 34 of IPC and Sections 30(2)(a), 26(2)(i), 26(2)(iv) of the FSS Act. It is submitted that the applicant is not named in the FIR. There is no recovery from the applicant. Pan Masala was found on the Sajakali Jamadar 26 of 66 Common Order-ABA-799-2022 and ors.doc house of lady aged 78 years. The house is not in the name of applicant. Section 328 of IPC is not attracted. In similar cases, the apex Court had granted interim protection to some persons. Reliance is placed on the interim order dated 13.11.2021 passed by the apex Court in Special Leave Petition No.8431 of 2021 in the case of Mohammad Ali Raheman @ Mohammed Ali Abdul Raheman Shaikh V/s. The State of Maharashtra.

Learned APP submitted that the offence is of serious nature. The goods worth Rs.14 Lakhs were seized from the house of Tamboli. Investigation revealed involvement of the applicant. The applicants are relatives of the woman from whose house prohibited articles were found. The flat of woman Shahin Tamboli was raided on 02.08.2022 and packets of Pan Masala worth Rs.14,39,961 were recovered. The said woman had disclosed to the Police that, the prohibited Pan Masala was kept by the applicants at her flat.

23. Applicant in ABA No.667 of 2022 is seeking pre-arrest bail in C.R.No.37 of 2022 registered with Akkalkot South Police Station, Solapur for offences under Section 328, 188, 272, 273 of IPC and Sections 26(2)(i), 26(2)(iv), 27(3)(e) r/w Section 59 of the FSS Act. It is submitted that Section 328 of IPC is not attracted. The Sajakali Jamadar 27 of 66 Common Order-ABA-799-2022 and ors.doc applicant has been falsely implicated in this case. The wife of applicant was granted anticipatory bail. The applicant was not present at the spot at the time of raid. The applicant has no connection with the offence. The packets are seized.

Learned APP submitted that the shop from where the contraband was seized belongs to the applicant. Custodial interrogation of the applicant is necessary. Section 328 of IPC is attracted.

24. Learned Advocate for the applicant in ABA No.314 of 2022 has submitted that the applicant is apprehending arrest in connection with C.R.No.19 of 2022 registered with Rajgad Police Station, Pune for offences under Sections 188, 269, 273, 328 r/w Section 34 of IPC and Sections 26(2), 26(2)(iv), 27(3)(d), 27(3)(e) & Section 59 of the FSS Act and Sections 2, 3 & 4 of the Epidemic Diseases Act, 1897. Learned Advocate for the applicant submitted that the only Section invoked in the FIR which is non bailable is Section 328 of IPC. The said Section is not applicable to the facts of this case. The applicant was granted interim protection by this Court vide order dated 04.02.2022. He relied upon the decision of the Hon'ble Supreme Court in the case of Joseph Kurian (supra) and order dated 30.09.2021 passed in batch of ABA No.944 Sajakali Jamadar 28 of 66 Common Order-ABA-799-2022 and ors.doc of 2020 and other applications and submitted that in similar circumstances, it is held that Section 328 is not attracted. There was no attempt to administer any intoxicant or stupefying substance by the applicant with an intention to commit an offence. It is further submitted that this Court in ABA No.483 of 2021 has taken contrary view vide order dated 24.03.2021 which has been challenged before the apex Court by preferring Special Leave to Appeal No.8431 of 2021. The apex Court vide order dated 13.11.2021 has granted interim protection directing that the Petitioner therein shall not be arrested. Custodial interrogation of the applicant is not necessary. The applicant has cooperated with investigation. The case of the prosecution is that the vehicle was intercepted and search has resulted in contraband allegedly belonging to the applicant. The issue relating to the applicability of Section 328 of IPC is pending before the apex Court in several matters. The order passed by the learned Single Judge (V. G. Bisht J.) of this Court at Aurangabad Bench in ABA No.944 of 2020 and other connected matters dated 30.09.2021 has not been challenged before the higher Court. The decision is binding on this Court.

Per contra learned APP submitted that, driver of the vehicle has disclosed the involvement of the applicant. The offence Sajakali Jamadar 29 of 66 Common Order-ABA-799-2022 and ors.doc is of serious nature. Gutkha and Pan Masala has adverse effect on the society. The applicant is supplier and stockist. The decision dated 30.09.2021 has been considered by this Court in subsequent decision dated 23.12.2021 passed in ABA No.1401 of 2021 and other connected matters, wherein it was held that Section 328 of IPC is attracted in such type of cases. Order dated 24.03.2021 passed in ABA No.483/2021 is not stayed by apex Court.

25. In ABA No.2595 of 2021 learned Advocate for the applicant advanced similar submissions on the issue relating to applicability of Section 328 of IPC. The applicant is apprehending arrest in connection with C.R.No. I-531 of 2021 registered with Shikrapur Police Station, Pune Rural for offences under Sections 188, 272, 273, 328 r/w Section 34 and Sections 26(2)(i), 26(2)

(iv), 27(3)(e), 27(3)(d), 30(i)(zz) & 30(2)(a) of the FSS Act. Apart from the legal submissions that, Section 328 of IPC is not attracted and that the issue is pending before the apex Court in several matters it is submitted that the applicant was not found in possession of any articles. The applicant is sought to be arrested on the basis of statement of co-accused who was in custody. Learned APP repeated his submissions on the issue of law relating to Section 328 of IPC. On facts it is submitted

that the driver of the vehicle Sajakali Jamadar 30 of 66 Common Order-ABA-799-2022 and ors.doc has named the applicant and shown his involvement in the crime. The statement of the accused can be utilized for the purpose of investigation which shows the link of other accused in the crime, although it may not be used as evidence. The offence is of serious nature. The accused involved in such crime are not entitled for relief under Section 438 of Cr.P.C.

26. ABA Nos. 1833 of 2022 and 2112 of 2022 arises out of same FIR. The applicants are apprehending arrest in C.R. No.327 of 2022 resigered with Malshiras police Station, Dist. Solapur for offences under Sections 59 of the FSS Act and Sections 353, 328, 188, 272 r/w Section 34 of IPC. The FIR was registered on 10.06.2022. It is submitted that the applicants are falsely implicated. Section 328 of IPC is not attracted. There is no evidence connecting applicants with the offence. The applicants are entitled for bail on the ground of parity. The other accused Dilip Maske was granted anticipatory bail. The applicants are implicated on the statement of the co-accused. Muddemal is already recovered.

Learned APP submitted that custodial interrogation of the applicants is necessary. The applicant in ABA No.1833 of 2022 is stockiest. The stock was kept at his instance. The offence is also Sajakali Jamadar 31 of 66 Common Order-ABA-799-2022 and ors.doc registered under Section 353 of IPC. Both the applicants are named in the FIR. On 10.06.2022, the Food Safety Officer received information that the contraband would be transported through van by the applicant in ABA No.1833 of 2022. The officer was standing on Malshiras Road. The vehicle came in high speed. In spite of directions to stop, the driver did not stop the vehicle. He was followed by the complainant. The said accused is the owner of contraband articles. It was learnt that the contraband articles were stored at the instance of Bhiwa Vyandade and accused No.3 - Bhagwant Bhiwa Vyandande. They disclosed that the articles were owned by accused No.1. The Muddemal includes Pan Masala of various companies and scented tobacco. The report disclosed that the applicant in ABA No.1833 of 2022 obstructed the informant. The said applicant was not entitled for parity. Muddemal was seized from the possession of the accused. Their custodial interrogation is necessary. Relief was granted to Dilip Maske on the ground that accused No.2 and 3 have disclosed that the Muddemal belongs to accused No.1.

27. The applicants in ABA No.892 of 2022 is apprehending arrest in C.R. No.568 of 2021 registered with Shirur Police Station for offences under Section 188, 272, 273, 328 r/w Section 34 of Sajakali Jamadar 32 of 66 Common Order-ABA-799-2022 and ors.doc IPC and Sections 26(2)(i), 26(2)(iv), 30(2)(a) r/w Section 59 of the FSS Act. The FIR was registered on 01.08.2021. Learned Advocate for the applicant submitted that no role has been assigned to the applicant. She is the house wife. The husband of the applicant is arrested. Interim protection is granted to the applicant. She has cooperated with investigation.

Learned APP submitted that the applicant has not cooperated with investigation. She has not attended the Investigating Officer. The applicant was giving instructions to keep Gutkha. The husband of the applicant has disclosed from where he has brought the contraband. CDR shows the link of the applicant with the co-accused. There are five antecedents against the husband of the applicant. The information was received from secret informant that pickup was loaded with Gutkha

Pan Masala Tobacco etc. when proceeded towards Karegaon. The vehicle was intercepted. The driver of the vehicle gave his name as Mohansing Raghuvarsing Sengar. The search of vehicle resulted in Pan Masala, Tobacco etc. worth Rs.7,20,000/-. On inquiry, driver of the vehicle disclosed that the articles were loaded from another vehicle. The driver was arrested. During the course of investigations, names of Kallu @ Krushnamurari Rajendra Gupta Sajakali Jamadar 33 of 66 Common Order-ABA-799-2022 and ors.doc and Pooja Krushnamurari Gupta (applicant) residing at U.P. were disclosed. While rejecting the application preferred by the applicant it was observed that the custodial interrogation is necessary to find out from where she had brought prohibited Muddemal.

28. ABA No.2519 of 2022 relates to C.R. No.19 of 2022 registered with Lonawala City Police Station for offences under Section 188, 328 r/w Section 34 of IPC and Sections 26(2), 26(2)

(a), 27(3)(d), 37(3)(e), 59 of FSS Act. The FIR was registered on 01.02.2022. On 01.02.2022 accused Ganesh Jadhav was found transporting banned Gutkha Pan Masala which was worth Rs.25,00,000/-. On inquiry he gave information that the other accused have loaded the articles. The case of the prosecution is that the accused was transporting the articles at the instance of the applicant. At the instance of the applicant co-accused misdirected investigating agency. It is submitted that the applicant was not the owner of the vehicle. He has no connection with the crime. He has no antecedents.

Learned APP submitted that the applicant was absconding. He has no license of transporting. The involvement was revealed during investigation. He was involved in transporting the articles.

Sajakali Jamadar 34 of 66 Common Order-ABA-799-2022 and ors.doc

29. ABA No.2518 of 2022 is preferred in connection with C.R. No. 926 of 2021 registered with Chakan Police Station, Pune for offences under Sections 188, 272, 273, 328 r/w Section 34 of IPC. Learned Advocate for the applicant submitted that the custodial interrogation of the applicant is not necessary. The applicant has been falsely implicated. He was arrested in other cases and granted bail. There is no evidence against the applicant in the present case. He has been implicated on the statement of the co-accused. Charge sheet is filed without arrest. He was in custody in another case. He is on bail in other cases.

Learned APP submitted that the applicant is supplier of articles. He is involved in similar offences. Charge Sheet is not filed against the applicant. Considering the antecedents, the applicant is not entitled for anticipatory bail.

30. ABA No.483 of 2022 relates to the offence registered with Talegaon Dabhade Police Station vide C.R. No.494 of 2021 for offences under Sections 188, 272, 273, 328 r/w Section 34 of IPC. The FIR was registered on 30.11.2021. The prosecution case is that the police intercepted the vehicle. There was recovery of Pan Masala worth Rs.3,95,000/-. Shivalal Rathod was driver of the vehicle. He disclosed that the contraband was recovered from the Sajakali Jamadar 35 of 66 Common Order-ABA-799-2022 and ors.doc applicant for selling it to other accused. The co-accused were

arrested. It is submitted that the applicant was not present at the place of seizure. The applicant is not the owner of vehicle. He is involved on the statement of the co-accused. He has cooperated with the investigation.

Learned APP submitted that the applicant is seller of contraband. The involvement of the applicant is disclosed by co-accused. There was no reason for the co-accused to implicate the applicant. The offence is of serious nature.

31. Learned Advocate for Applicant in ABA No.2761 of 2021 submitted that the applicant is apprehending arrest in C.R.No.804 of 2021 registered with Solapur Taluka Police Station, Solapur for offences under Sections 188, 272, 273, 328 r/w Section 34 of IPC and Section 26(2)(i), 26(2)(iv), 27 (3)(e) and 59 of the FSS Act. The case of the prosecution is that the one person is found on possession of Gutkha scented tobacco. Investigation proceeded. The accused No.1 is transport Manager and accused No.3 is transport owner. The accused No.1 stated that the accused No.2 (applicant) is the owner of contraband articles worth Rs.4,83,000/- Learned Advocate for the applicant submitted that the custodial interrogation of the applicant is not necessary. The applicant was Sajakali Jamadar 36 of 66 Common Order-ABA-799-2022 and ors.doc not present at the spot. He has been implicated on the basis of statement of co-accused.

Learned APP submitted that the statement of the co-accused showed involvement of the applicant. CA report shows that there was Nicotine in contraband recovered. Custodial interrogation of the applicant is necessary.

32. In ABA No. 2737 of 2021, the applicant is apprehending arrest in C.R. No. 770 of 2021 registered with Shirur Police Station, Dist. Pune for offences under Sections 26(2)(i), 26(2)(ii), 26(2)(iv) 27(3)(d) 30(2)(a) of the FSS Act and Sections 328, 188, 272, 273, r/w Section 34 of the IPC. The case of the prosecution is that the information was received and raid was effected on 06.10.2021 at Amul Dairy Shirur. Co-accused Ganesh and Dhiraj Prajapati were found in possession of Vimal Pan Masala and Hira Pan Masala and tobacco in violation of prohibitory orders. Both were arrested. Muddemal were seized. The police received information that the Muddemal was acquired by Bapu Borade, owner of Amul Milk Dairy and the accused were selling the same as per directions of the applicant. It is submitted that, nothing is recovered from applicant. Applicant has not connection with crime.

Learned APP submitted that the involvement of the applicant was disclosed during investigation. The offence is of Sajakali Jamadar 37 of 66 Common Order-ABA-799-2022 and ors.doc serious nature. Custodial interrogation of the applicant is necessary. The involvement of the applicant is disclosed by the co-accused.

33. The applicant in ABA No.532 of 2022 is apprehending arrest in Crime No.3 of 2022 registered with Dadar Sagari Police Station, Dist. Raigad for offences under Sections 328, 272, 273, r/w Section 34 of IPC and Section 59 of the FSS Act. The FIR was registered on 21.01.2022. The case of the prosecution is that, secret information was received that car carrying Gutkha and Pan Masala would be proceeding from Mumbai to Pen. The car was intercepted. The driver gave his name as

Bhimaram Devasi. Car was searched. Gutkha and Pan Masala was found in the car. Bhimaram Devasi and Mahendar Sevda were questioned and they disclosed that they got Gutkha and Pan Masala from Naresh Choudhary. Learned Advocate for the applicant submitted that Section 328 of IPC is not attracted in the present case. The applicant is sought to be arrested on the statement of co-accused. Charge-sheet is filed against the co-accused. Custodial interrogation of the applicant is not required.

Learned APP submitted that the applicant is seller of contraband. Statement of the co-accused cannot be brushed aside Sajakali Jamadar 38 of 66 Common Order-ABA-799-2022 and ors.doc at this stage. Section 328 of IPC is attracted in the present case.

34. Learned Advocate for the applicant in ABA No.226 of 2022 and 321 of 2022 submitted that the applicant in both the applications are apprehending arrest in C.R. No.34 of 2022 registered with Hadapsar Police Station, Pune for offences under Sections 272, 273, 328, r/w Section 34 of IPC and Sections 26(2)

(i), 26(2)(iv) and 59 of the FSS Act. The FIR was lodged by Anil Gawate alleging that, on 09.01.2022 Mr. Shinde Sub-Inspector attached to Hadapsar Police Station had informed him that he has intercepted the truck loaded with tobacco, Gutkha at Tekwade Petrol Pumb, Hadapsar, Pune. The informant visited the spot. Truck was loaded with Pan Masala and moving to Phursungi godown towards Solapur Road. The informant and others stopped the truck at Manjari Phata and took it inside the petrol pump. Inquiry was made with driver who disclosed that truck was loaded with Pan Masala and Gutkha and it was coming from Nipani - Karnataka and going towards Phursungi godown. It is in the name of Sarfaraj and the articles were to be unloaded at Phursungi godown. Material was found valued Rs.45,68,968/-. The articles were seized. Learned Advocate for the applicant submitted that the applicant is implicated on the basis of statement of co-accused.

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Such statement is not admissible in evidence.

Shahjad Khan is

granted anticipatory bail.

Role of Shahjad Khan and Sarfaraz

Shaikh is similar. There is no evidence to connect the applicants with the crime. There is no evidence of CDR. Transportation is not covered under Section 328 of IPC. No specific role is attributed to the applicant. Reading definition of Section 328 of IPC would indicate that, it is not applicable in the present case. There is no allegations of administration of any substance. The decision of the Hon'ble Supreme Court in the case of Joseph Kurian (supra) is applicable. Reliance is placed on the decision of the Aurangabad Bench of this Court delivered in ABA No.944 of 2021 and other connected matters vide order dated 30.09.2021. Reliance is also placed on the decision in the case of Nilesh S/o Narayan Sanghavi Vs. The State of Maharashtra delivered in Criminal Application

No.442 of 2020 by the division Bench of the Nagpur Bench of this Court and the observations made in Paragraph Nos. 12, 13 & 14 of the said decision. It is submitted that this Court in several other applications had granted anticipatory bail on the ground that Section 328 of IPC is not attracted in such cases.

Learned APP submitted that, Section 328 is squarely attracted in the present case. Strong reliance is placed on the Sajakali Jamadar 40 of 66 Common Order-ABA-799-2022 and ors.doc decision of this Court dated 23.12.2021 in ABA No.1405 of 2021 and other connected matters. It is submitted that the statement of the co-accused can be relied upon at the stage of investigation. Co-accused has disclosed the involvement of the applicant. The applicant is the owner of contraband. Custodial interrogation of the applicant is necessary.

35. Learned Advocate for the applicant in ABA No.2931 of 2022 submitted that, the applicant apprehending arrest in C.R. No.538 of 2022 registered with Nigadi Police Station, Pimpri Chinchwad for offences under Stations 188, 269, 270, 272, 328, 273 r/w Section 34 of IPC. The FIR was registered on 19.07.2022. The prosecution case is that the accused Amol Bhakare was found selling Gutkha at his Pan Stall. Articles worth Rs.23,608/- were seized from him. The applicant is supplier of the banned articles to the co-accused. It is submitted that Amol Bhakare was arrested and granted bail vide order dated 11.08.2022. Contraband was not recovered from the applicant. Only on the statement of the co-accused, the applicant need not be subjected to arrest.

Learned APP submitted that the involvement of the applicant is disclosed by the co-accused. The applicant is supplier of contraband. His custodial interrogation is necessary.

Sajakali Jamadar 41 of 66 Common Order-ABA-799-2022 and ors.doc

36. I have perused all the applications, the respective FIRs, documents annexed to these applications and the orders rejecting the applications for bail. The offences related to transport, sale, possession of banned substances. On analysing the arguments of both the sides and factual aspects of the matters, I find that the applicants in all these applications are involved in the crime. There is sufficient evidence to show the involvement of the applicants in the offences. At the stage of investigation, the statements of co-accused which gives a link about involvement of the suspects cannot be brushed aside. On the factual aspects and the merits of the case, the applicants are not entitled for relief under Section 438 of Cr.P.C. The custodial interrogation of the applicants is necessary. The offences are of serious nature. Section 328 of IPC can be applied in all these cases.

37. The issue relating to applicability of Section 328 of IPC in similar cases was urged before me in several applications viz. ABA No.1401 of 2021 and other connected matters which were decided vide order dated 23.12.2021, wherein it was held by me that Section 328 of IPC could be applied to the cases of the nature which are subject matter of the present applications.

38. The learned Advocates representing the applicants relied on decision of the Apex Court in the case of Joseph Kurian Philip Sajakali Jamadar 42 of 66 Common Order-ABA-799-2022 and ors.doc Jose (supra), the decision of learned Single Judge of this Court in ABA No. 944/2020 and other

companion matters (Coram : Coram :

V.G. Bisht, J.) dated 30.09.2021. Relying upon the said decisions, it has been urged that the ingredients to constitute the offence under Section 328 of I.P.C. are lacking in these cases. It is submitted that it is necessary to establish that the accused had administered poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt. Reliance is also placed on certain interim orders passed by Hon'ble Supreme Court in some matters.

39. The prosecution has strongly countered the submissions of the learned Advocates representing the applicants. Contention of the learned prosecutors is that Section 328 of I.P.C. is squarely applicable in all these cases. The facts relating to all the first information reports show involvement of the applicants. On facts of individual cases, it is submitted that complicity of all the applicants is disclosed in F.I.R. and during investigation.

40. The issue regarding applicability of Section 272, 273, 328, 511 of I.P.C. alongwith the provisions of Food Safety Standards Sajakali Jamadar 43 of 66 Common Order-ABA-799-2022 and ors.doc Act, 2006 was raised before this Court in Writ Petition No. 830 of 2016 in the case of Umraosing Julalsingh Patil vs State of Maharashtra and others. This Court, after going through the provisions, has observed that wide scope is given to Section 328 of I.P.C. When the Legislature feels that these substances are harmful to life, they can take away the life and they can cause serious harm to the life, it is not open to the Court to presume that such substances may not cause such harm. The Legislation is made in public interest and Court needs to keep in mind that it is scientifically proved that these substances can take away the life by causing disease like cancer. It was also observed that the contention of the petitioner therein that the prosecution needs to make allegation with regard to any specific person for use of Section 328 of I.P.C. and actually administering of such substance needs to be alleged, cannot be accepted.

41. The issue relating to applicability of Section 328 of I.P.C. is considered by Division Bench of this Court in Criminal Application No. 4968 of 2016 with Criminal Application No.4214/2016 (Zahir Ibrahim Panja and others vs. State of Maharashtra and another). Similar issue was also dealt by this Court in Criminal Application No. 4353 of 2016 (Vasim Shaikh vs Sajakali Jamadar 44 of 66 Common Order-ABA-799-2022 and ors.doc State of Maharashtra and others). The Division Bench of this Court at Nagpur had also dealt with similar issue in Criminal Application No. 800 of 2020 (Ankush Vs. State), wherein the F.I.R. was sought to be quashed on the ground that Section 328 of I.P.C. is not applicable. In the said order it was observed that the case of the petitioner therein is covered by later part of language of Section 328 of I.P.C. and impediment cannot be created for the Investigating Officer to investigate into the crime.

42. In the order dated 30.09.2021 relied upon by the learned Advocates for the applicants, this Court has relied upon the decision by the Apex Court in the case of Joseph Kurian (supra). The said decision was delivered in the facts of that case. While dealing with the question of applicability of

Section 328 of I.P.C., the Apex Court had observed that it cannot be said that the accused or any of them knew that arrack mixed with small quantity of methyl alcohol (2.64 % as found by the chemical analyst) was likely to cause death or serious bodily injury that is likely to cause death. On this finding applicability of Section 302 or even that of Section 304 of I.P.C. is ruled out. The finding of the High Court on the facts situation is open to doubt. If the finding be correct that the accused did not have guilty knowledge of causing death or of Sajakali Jamadar 45 of 66 Common Order-ABA-799-2022 and ors.doc likelihood of causing death or of serious bodily injury likely to cause death, how could the guilty knowledge stop in that slide or grading not coming down to take within its arms hurt. Prosecution urged that in the present cases accused were well aware and knowing that the contraband products are injurious to health, their harmful effect and that there is prohibitory order issued against sale, storage, transport and manufacture of the contraband products. Thus, the facts in the present cases and in the case of Joseph Kurian (supra) are altogether different. Apart from that, later part of Section 328 of I.P.C. was not considered by the Apex Court. In the order dated 30th September 2021, passed by this Court in ABA No.944 of 2020 and other companion matters, this Court had not considered various orders passed by this Court, more particularly the order passed in ABA No.2451 of 2020 in the case of Vinod Gupta and another. The investigation is at primary stage. Custody of the applicants is necessary. The orders passed by this Court in the cases of Anand Chaurasiya and Ganesh Jadhao are stayed by the Supreme Court and the ratio laid down in the case of Vasim Shaikh stands reviewed. This Court, in the order dated 30th September 2021 (supra) has observed that the order passed by Division Bench of this Court at Nagpur in the case of Nilesh Narayan Sanghvai vs State of Maharashtra (Coram : V.M. Sajakali Jamadar 46 of 66 Common Order-ABA-799-2022 and ors.doc Deshpande and Anil S. Kilor, JJ.) was not considered by this Court in various orders. The same Division Bench at Nagpur at latter point of time in the case of Ankush vs State of Maharashtra, has observed that Section 328 of I.P.C. is applicable in such cases.

43. In the case of Dhariwal Industries Ltd. Vs State of Maharashtra (Writ Petition No. 3398 of 2011) and other companion matters, the Division Bench of this Court was dealing with validity of different regulations under Food Safety and Standards Act, 2006 and statutory order dated 19th July 2012 issued by Commissioner of Food and Safety, State of Maharashtra under Section 30 (2) (a) of Food Safety and Standards Act, 2006. Although the order dated 15th September 2012 was relating to refusal of interim relief, the Court has dealt with in detail the provisions of various Acts, various reports and harmful effects of tobacco and other articles. It was observed that the report of National Institute of Health and Family Welfare reveals that more than one-third of adults in India use tobacco in some or other form, more than 16 crore people are users of only smokeless tobacco and 4 crore people are users of both smoking and smokeless tobacco. Several studies in India have reported a strong association between smokeless tobacco use and oral pre-malignant / pre-cancerous lasions. The risk increases with the duration and frequency of Sajakali Jamadar 47 of 66 Common Order-ABA-799-2022 and ors.doc smokeless tobacco use. There are consistent results of an increased risk of oral cancer with the use of different forms of smokeless tobacco used in the country. There is also strong association between smokeless tobacco and pancreatic cancer, throat cancer, oesophagal cancer, renal cancer and higher mortality rate. The use of smokeless tobacco also causes non-cancerous diseases/ conditions including nervous system diseases, metabolic abnormalities, reproductive complications and other diseases like gastrointestinal and respiratory

diseases The study further reveals that areca nut or supari causes harmful effects like oral pre-malignant lasions, oral cancer, throat cancer, oesophagal cancer, liver cancer and non-cancerous diseases/conditions like hypertension and cardiovascular diseases, nervous system disease, metabolic abnormalities, reproductive abnormalities, liver and kidney diseases.

44. Criminal Writ Petition No.1027 of 2015 preferred by Ganesh Pandurang Jadhao (supra) and other Writ Petitions and Criminal Applications were disposed of by Division Bench of this Court, (Aurangabad Bench) vide Judgment and order dated 4th March 2016 (Coram:- A.V. Nirgude and I.K. Jain, JJ.). The petitions/applications were allowed. The action initiated against Sajakali Jamadar 48 of 66 Common Order-ABA-799-2022 and ors.doc petitioners/applicants was declared illegal and complaints/reports were quashed. The said Judgment and order was challenged by State of Maharashtra before Apex Court. By order dated 20.09.2018, Apex Court set aside the finding of High Court and matters were remitted back to High Court for considering contentions afresh which were not argued before High Court.

45. The Division Bench of this Court (Aurangabad Bench) in the case of Vasim Jamil Shaikh Vs. State of Maharashtra (Coram:-

T. V. Nalawade and Smt. Vibha Kankanwadi, JJ.) (Criminal Application No.4353 of 2016 with Criminal Application No.4354 of 2016) held that the contention that the provision of Section 328 of IPC cannot be used in that case is not acceptable. This provision shows that, whoever administers to or causes to be taken by any person which is likely to cause hurt then he can be punished under provision of Section 328 of IPC. Specific person to whom the thing is administered or the specific incident in which it was caused to be taken need not be mentioned in the case like present one. The persons who are indulging into illegal activity like possessing and selling the substances which are likely to cause hurt are covered by the provisions of Section 328 of IPC. The contention of applicants in the said proceedings was that, even if it is presumed that the Sajakali Jamadar 49 of 66 Common Order-ABA-799-2022 and ors.doc applicants were found in possession of prohibited articles and they were in huge quantity, the provisions of Section 272, 273 and 328 of IPC cannot be used. It cannot be inferred on the basis of prohibition for manufacture, possession and sale of articles, they are injurious to health as mentioned in the above provisions of IPC.

Reliance was placed on observations made in Judgment dated 04.03.2016 delivered in Criminal Writ Petition No.1027 of 2015 (Ganesh Pandurang Jadhao and Anr. Vs. State of Maharashtra and Ors.) which was set aside subsequently by Apex Court. The prosecution relied upon order dated 15.09.2012 passed by this Court in Writ Petition No.1631 of 2012 (M/s. Dhariwal Industries Ltd. Vs. State of Maharashtra). The said decision was not referred in the case of Ganesh Pandurang Jadhao (supra). The Court referred to decision of this Court in the case of Sanket Foods Products Pvt.Ltd. Vs. Union of India dated 23.11.2011 (Writ Petition No.3398 of 2011). The Court had considered bad effects of the components of Gutkha, Pan Masala on health. Reference is made to decision of this Court in Writ Petition No.830 of 2016 (Umrao Singh Vs. State of Maharashtra and Ors .) decided on 10.01.2017. Applicability of Section 328 of IPC was considered. It was held that, these substances

contain nicotine and magnesium carbonate and they can take life. The Court considered ingredients Sajakali Jamadar 50 of 66 Common Order-ABA-799-2022 and ors.doc of provisions of Section 328 of IPC i.e. (i) causes to be taken by any person unwholesome drug (ii) knowing it to be likely that, he will thereby cause hurt. Court also referred to decision in the case of Zahir Ibrahim Panja and Ors. Vs. State of Maharashtra (Criminal Application No.4968 of 2016), decided on 16.10.2018, wherein applicability of Sections 273 and 328 of IPC and also provisions of the Act when such articles were found in possession in Maharashtra. The Court also referred to decision in the case of State of Maharashtra and Ors. Vs. Sayyed Hasan and Ors. (Criminal Application No.1195 of 2018) decided on 20.09.2018. In that decision Court had considered provisions of Special Enactment, IPC and Section 26 of General Clauses Act and observed that there is no Specific bar to register crime under IPC even if provisions of Special Enactment are attracted. The Court held that ratio in the case of Ganesh Jadhao (supra) cannot be used in favour of applicants therein and no relief can be granted to them.

46. This Court in the case of Anand Ramdhani Chaurasia, (supra) has dealt with the similar issue. The Division Bench of this Court relied upon the decision of the Apex Court in the case of Joseph Kurian (supra), it was held that Section 328 of IPC is not attracted. It was also observed that the Division Bench of this Court Sajakali Jamadar 51 of 66 Common Order-ABA-799-2022 and ors.doc in the case of Vasim Shaikh (supra) has not considered the judgment of the Apex Court in the case of Joseph Kurian (supra) and it is per incuriam. The decision of this Court in the case of Anand Chaurasia was challenged before the Apex Court vide Special Leave Petition (Criminal) No.8224 of 2020. On 31.08.2020, the Apex Court passed the following order:-

"Delay condoned. Issued notice. Until further orders, there shall be a stay of operation of the impugned judgment and order passed by the High Court of Judicature at Bombay."

47. Criminal Writ Petition No.1027 of 2015 preferred by Ganesh Pandurang Jadhao and other connected matters, which were remitted for fresh hearing was heard by the Division Bench (Aurangabad Bench). The said petition was decided vide order dated 15.10.2020. Court referred to decision of this Court in the case of Anand Ramdhani Chaurasia and concurred with the view expressed in the said Judgment and order dated 13.09.2019, on the issue of applicability of Section 328 of IPC. After pronouncement of judgment, it was pointed out to the Court that the decision in the case of Anand Chaurasia (supra) has been challenged before the Apex Court and interim order has been passed by the Apex Court. Hence, the Division Bench stayed the said order for a period of six Sajakali Jamadar 52 of 66 Common Order-ABA-799-2022 and ors.doc weeks. The said decision dated 15.10.2020 in the case of Ganesh Jadhao & Ors. (supra) was challenged before the Apex Court by the State of Maharashtra. The Apex Court passed the following order on 07.01.2021: -

"Issue Notice. Until further orders, there shall be a stay of operation of the impugned judgment(s) and order(s) passed by the High Court. Tag with SLP (Cri.) Diary No. 8224/2020".

48. Learned Single Judge of this Court dealt with the issue about the applicability of Section 328 of IPC in the case of Vinod Ramnath Gupta (supra). The contention of the applicants in the said application was that offences punishable under Sections 188, 272 and 273 of IPC are bailable and so far as offence under Section 328 of the IPC is concerned, the Division Bench of this Court in the case of Anand Chaurasia (supra) has held that mere storage of prohibited food articles without any further action and on contemplation that it would be sold in the market, brought by a person from the market and consumed by him is too far fetch consequence of an act of administering or causing to be taken. This Court in the case of Vinod Gupta vide order dated 06.11.2020 had taken into consideration the decisions delivered in the case of Anand Chaurasia (supra) and Ganesh Jadhao (supra). It was Sajakali Jamadar 53 of 66 Common Order-ABA-799-2022 and ors.doc observed that in the case of Anand Chaurasia, FIR was registered on the basis of complaint received from Food Safety Officer recording that search of residence and warehouse of the petitioner resulted in recovery of Gutkha and Pan Masala and the storage contravened the notification dated 28.07.2020 issued by the Food Safety Commissioner. Accused were arrested and released on bail. Petitioners therein had challenged the action initiated against them by registering the FIR. The judgment in the case of Anand Chaurasia (supra) has been stayed by the Apex Court. The judgment in the case of Ganesh Jadhao (supra) was stayed by same bench for a period of six weeks. Considerations for quashing FIR/complaint under Article 226 of the Constitution of India and under Section 482 of Cr.P.C., being different, cannot be applied in pre-arrest bail proceeding. Section 328 of IPC is attracted where the substance in question is poison or any stupefying, intoxicating or unwholesome drug or other thing is administered or caused to be taken by any person with an intent to cause hurt or with an intent to commit or to facilitate the commission of an offence or intent it to be likely that he will thereby cause hurt, becomes punishable under the provision. The first part of Section 328 contemplates a direct involvement of person and second part suggest any indirect method for causing one of the substances to be Sajakali Jamadar 54 of 66 Common Order-ABA-799-2022 and ors.doc taken by any person. Expression "causing" involves some action.

"Causation" means the action of causing something. "Intervening causation" means an event that comes between the initial event in sequence and the end result. Manufacturing "unsafe food" is initial event. Causing its movement by transporting or storing it with an intent to reach to end user are the events in sequence caused by active participation of intermediate agencies or persons. Thus, all such events involving active participation of persons at each stage, is relevant. A person at end is a 'consumer' to whom "unsafe food"

is sold, knowing well that its consummation would cause hurt to him. Persons involved in manufacturing "unsafe food", causing its movement to market or storing it with intent to sell it, either himself or through other persons, while prohibitory 'order' promulgated under Section 30 of the Food and Safety Act is in force and such all persons, under express or implied authority either individually or otherwise, "causes person to take" unsafe food with intent to cause hurt. It is indirect causation. It was further observed that the manufacturing unsafe food articles, moving these goods from manufacturing unit to market for its sale is an event and that any action in chain of circumstances which foreseeably leads to and facilitates the sale of food articles is further event may be said to be a cause of that event to bring the Sajakali Jamadar 55 of 66 Common

Order-ABA-799-2022 and ors.doc action within the expression' "causes to be taken by a person", any poison with intent to cause hurt to such person, in Section 328 of the IPC. The offence under Section 328 of IPC, essentially is not causing someone else to do prohibited act but 'causing' a person to consume food articles knowing well that its consumption would hurt such person. Even otherwise, where the investigation is at initial stage, and the relevant material is yet to be collected; it may not be appropriate to hold that FIR does not make out an offence under Section 328 of IPC. The said application was rejected.

49. In the case of Sagar Sadashiv Kore (supra) decided on 08.02.2021 the same ground was urged again with additional contention that stay of operation of the judgments in the case of Anand Chaurasia (supra) and Ganesh Jadhao (supra) does not mean that those judgments do not exist and therefore the ratio is not applicable. The applicant was seeking anticipatory bail on the ground that except offence under Section 328 of IPC, all other offences are bailable. Section 328 of IPC is not attracted. The advocate for applicant had also relied upon the decision of the Supreme Court in the case of Shree Chamundi Mopeds Ltd. (supra). The application was rejected by order dated 08.02.2021. It was observed that the judgment in the case of Anand Chaurasia Sajakali Jamadar 56 of 66 Common Order-ABA-799-2022 and ors.doc (supra) as well as Ganesh Jadhao (supra) were stayed by Supreme Court. The Court relied on the decision of this Court in the case of Vinod Ramnath Gupta (supra). Since the Judgment in the case of Anand Chaurasia is stayed the ratio laid down in Vasim Shaikh's case stands revived. In the case of Vasim J. Shaikh (supra), the Court had relied upon the order passed in Zahir Ibrahim Panja & Ors. Vs. State of Maharashtra & Anr. (Criminal Application No.4986 of 2016). It is observed that reference was made in that judgment to the purpose of issuing orders of prohibition. State Government had considered research material of Tata Memorial, Tata Institute of Fundamental Research and other institutes. It was observed that it was scientifically established that areca nut chewing has been classified as carcinogenic to humans. Tobacco and such food, substance cause cardiac arrest, oral cancer, esophageal cancer, stomach cancer and other diseases. They cause diseases of various internal organs and glands. The Division Bench in Vasim's case had observed that Section 328 of IPC is applicable in such cases. Court also noted the fact that Vasim's case (supra) was cited before the Division Bench in Anand Chaurasia's (supra) case and it was held that the decision in Vasim's case (supra) was per incuriam. Now the Supreme Court has stayed the operation of the judgment and order in Anand Chaurasia's (supra) case and thus, the ratio laid down in Sajakali Jamadar 57 of 66 Common Order-ABA-799-2022 and ors.doc Vasim Shaikh's (supra) case stands revived. Learned advocate appearing for the applicant therein had submitted that stay of operation of judgment passed in Anand Chaurasia's case (supra) and Ganesh Jadhao's case (supra) does not mean that those judgments do not exist. The Court considered the said submissions and the ratio laid down in Shree Chamundi Mopeds Ltd. (supra). This Court rejected the contention of the counsel for the applicant and observed that the judgment in Shree Chamundi Mopeds Ltd. (supra), itself clarifies that stay of operation of order means that the order which has been stayed would not be operative from the date of passing of the stay order. This sufficiently clarifies the position. The Apex Court stayed operation of judgment and order in Anand Chaurasia's case. The operation of Anand Chaurasia's judgment was stayed on 31.08.2020. The incident in question in that case is dated 07.01.2021 thus, operation of Anand Chaurasia Judgment was stayed on that particular date. Hence, Anand Chaurasia's case does not operate. It was specifically observed that there shall be a stay of operation of the impugned judgment and order

passed in Anand Chaurasia's case (supra).

50. It is pertinent to note that the judgment of the Apex Court in the Case of Joseph Kurian (supra) was referred to by Division Sajakali Jamadar 58 of 66 Common Order-ABA-799-2022 and ors.doc Bench of this Court in Anand Chaurasia's case (supra). The judgment in the case of Anand Chaurasia (supra) has been stayed by the Apex Court. The case of Ganesh Jadhao (supra) was initially heard by Division Bench of this Court at Aurangabad Bench and the said petition was allowed. The decision was challenged before the Apex Court. The order is set aside and the matter was remanded back to the High Court by the Apex Court. Thereafter, it was again heard by Division Bench of this Court at Aurangabad Bench and the petition was allowed. However, since it was pointed out that on the date of pronouncement of judgment, the judgment in the case of Anand Chaurasia (supra) has been stayed by the Apex Court. The decision in the case of Ganesh Jadhao (supra) was stayed by the Division Bench for a period of six weeks and subsequently which has been stayed by the Apex Court.

51. The decision in the case of Joseph Kurian (supra) was delivered in the facts of the said case. It is apparent that the Court primarily proceeded on the basis that the accused had no knowledge that the liquor was adulterated. There was no reason to believe that arrack was mixed with small quantity of methyl alcohol. It is also apparent that the Apex Court has not dealt with later part of Section 328 of I.P.C. since there was no occasion to do Sajakali Jamadar 59 of 66 Common Order-ABA-799-2022 and ors.doc so. The applicants, who are involved in possessing, transporting, selling the contraband, are aware that the products are injurious to health and also about their harmful effects. They are also aware about prohibitory order issued to sell, storage, transport, manufacture of such contraband products. No one can show ignorance about such prohibitory order. Thus, the observations in the case of Joseph Kurian (supra) are not applicable in the facts of the present cases.

52. While deciding ABA No. 944 of 2020 and other connected matters, vide order dated 30th September 2021, this Court had observed that there is no dispute that judgment in the cases of Anand Chaurasiya (supra) and Ganesh Jadhao (supra) are stayed by the Apex Court. However, the judgment delivered by Division Bench of this Court in the case of Nilesh Sanghvi (supra) was not referred by the learned Single Judge of this Court. The Court has also relied upon the decision of the Apex Court in the case of Joseph Kurian (supra) and decision in the case of Nilesh Sanghvi (supra) delivered by Division Bench of this Court at Nagpur vide order dated 9th September 2020 is referred to the decision in the case of Anand Chaurasiya and another vs State of Maharashtra. The said decision has been stayed by the Apex Court. The Division Sajakali Jamadar 60 of 66 Common Order-ABA-799-2022 and ors.doc Bench has also made reference to the decision of Malkiat Singh vs. State of Punjab, AIR 1970 (SC) 713. The said decision is not applicable in the present cases. It was delivered in different context and facts. Thus, the Court had relied upon the decision of Anand Chaurasiya (supra). The same Division Bench had occasion to deal with similar issue at later point of time in the case of Ankush Vs. State of Maharashtra. Although the matter was at interim stage, the reasons assigned by the Court are vital and important. The Court has analyzed Section 328 of I.P.C. The facts of the said case indicate that on search 1970.80 kg of scented tobacco, pan masala was seized. Crime was registered under Sections 26, 27 and 59 of the Food Safety and Standards Act,

2006 and under Sections 188, 272, 273 and 328 of the I.P.C. The petitioner therein had challenged the F.I.R. relating to the aforesaid offences. It was observed that if section 328 of I.P.C. is properly analyzed, then prima facie, the Court is of the view that Section 328 of I.P.C. can be made applicable in view of the language used in the later part of the Section. The accused is running a business establishment and at the time of search of his business, huge quantity of the contraband was seized. Therefore, prima facie case of the accused is covered by later part of Section 328 of I.P.C. In para 29 of the said decision, it was observed that, since the case of the petitioner is covered by the Sajakali Jamadar 61 of 66 Common Order-ABA-799-2022 and ors.doc later part of the language of Section 328 of I.P.C., at least prima facie, an impediment cannot be created for the Investigating Officer to investigate into the crime. If the prayer made by the applicant is granted, it would amount to stalling the investigation which is right of the Investigating Officer to investigate into the matter, especially when prima facie material is available on record that the accused has committed offence for which the crime is registered against him. The prayer for stay for investigation was rejected. Prayers for no coercive steps or arrest of the accused in the said crime were also rejected. Paragraph 30 of the said order also refers the fact that the decision in the case of Nilesh Narayan Sanghavi vs. State of Maharashtra in Criminal Application No. 442 of 2020 was brought to the notice of the Court which was decided by the same Court. The Court has observed that the Court is not making any comment in respect of the applicability of the said decision.

53. In the case of Umraosing Julalsingh Patil (supra), the learned Single Judge of this Court, vide order dated 10th January 2017, had considered the applicability of Section 328 of I.P.C. wherein the accused had approached this Court for quashing the proceedings. The applicant therein had relied upon the decision of this Court in the case of Ganesh Jadhao and another vs State of Sajakali Jamadar 62 of 66 Common Order-ABA-799-2022 and ors.doc Maharashtra. After quoting Section 328 of I.P.C. it was observed that the said provision contains three aspects ; (i) causes to be taken by any person, (ii) other thing and (iii) knowing it to be likely that he will thereby cause hurt. The court observed that Legislature feels that these substances are harmful to the life, they can take away the life and they can cause serious harm to the life and it is not open to the Court to presume that such substances may not cause such harm. The Legislation is made in public interest and the Court needs to keep in mind that it is scientifically proved that these substances can take away the life by causing disease like cancer. The decisions in the case of Zahir Ibrahim Panja and others dated 16.10.2018, Vasim Jalil Shaikh and others dated 29.11.2018 and several other orders took similar view.

54. While deciding ABA No. 483 of 2021, the applicant therein had urged that Section 328 of I.P.C. is not applicable and the decision in the case of Joseph Kurian (supra) holds the field. The decisions in the cases of Anand Chaurasiya and Ganesh Jadhao (supra) also support the contention of the applicant. Several decisions were cited on law of precedents and it was also contended that merely because the Apex Court had stayed the decisions of this Court, effect of such decision does not get stayed.

Sajakali Jamadar 63 of 66 Common Order-ABA-799-2022 and ors.doc In paragraph 14 of the said decision dated 24.03.2021, this Court has referred the decision in the case of Joseph Kurian (supra) and has observed as to why it is not applicable in the present cases. It was observed that the decision of the Apex Court in the case of Joseph Kurian (supra) was referred to by Division Bench of this

Court in the case of Anand Chaurasiya and the decision delivered in the case of Anand Chaurasiya has been stayed by the Apex Court. The decision delivered in the case of Ganesh Jadhao wherein reference was made to the decision of Anand Chaurasiya's case is also stayed by the Apex Court. It was also observed that the Apex Court in the case of Joseph Kurian (supra) was adjudicating criminal appeals arising out of judgment of the High Court. Accused were convicted. Trial Court had appreciated the evidence. The conviction was confirmed by the High Court. The facts of the said case indicate that it was relating to consumption of poison arrack adulterated with methyl alcohol and it is in the context of the facts of the said case. It was observed that to constitute the offence under Section 328 of I.P.C. the prosecution was required to prove that substance in question was poison or any stupefying, intoxicating or unwholesome drug, etc., that the accused administered the same to the victim with intent to cause hurt or knowing it to be likely that he would thereby cause hurt. It is also Sajakali Jamadar 64 of 66 Common Order-ABA-799-2022 and ors.doc apparent that the decision proceeded on the basis of the fact that the accused therein had no knowledge about the presence of adulterated substance in the liquor. While deciding ABA No.483 of 2021, it was observed that the Court is relying upon the view expressed by Division Bench of this Court in the case of Vasim Shaikh vs State of Maharashtra and the decisions of single Judge of this Court in the case of Vinod Gupta and Sagar Kore. Investigation is in progress. Decision in the case of Joseph Kurian (supra) was delivered after the trial was over. After the evidence was recorded, the accused was convicted and the appeals challenging the conviction were before the Court.

55. ABA No. 483/2021 was decided by me vide order dated 24th March 2021. I am reiterating and in agreement with all the decisions wherein it is held that Section 328 of I.P.C. is applicable in such cases. There is no bar for invoking provisions of I.P.C. In all the applications before me, involvement of applicants is disclosed. They are not entitled for anticipatory bail. Section 328 of I.P.C. is applicable in all these cases. The Apex Court had no occasion to deal with latter part of Section 328 of I.P.C. in the case of Joseph Kurian (supra). I have considered the decision of learned Single Judge of this Court dated 30.09.2021 in ABA No.944/2020 and Sajakali Jamadar 65 of 66 Common Order-ABA-799-2022 and ors.doc other connected applications while deciding ABA No.1405/2021 and other connected applications and vide order dated 23.12.2021 took a view that Section 328 of IPC is applicable in similar cases. It appears in some cases the Hon'ble Apex Court has granted interim relief in some matters. However, in the light of view taken by me, the contentions of applicants cannot be accepted.

56. In view of the above, no case is made out for granting relief in these applications. Hence, I pass the following order.

ORDER All Anticipatory Bail Applications are rejected and stand disposed off.

(PRAKASH D. NAIK, J.)

57. At this stage, learned Advocates appearing for applicants in all applications requested for extension of interim relief granted by this Court by a period of four weeks. Prayer is opposed by the prosecution.

58. Considering the fact that, interim protections was running in favour of the applicants, the same is extended by a period of four weeks from today in all applications.

Digitally (PRAKASH D. NAIK, J.) signed by SAJAKALI SAJAKALI LIYAKAT LIYAKAT JAMADAR
JAMADAR Date:

2023.01.03 18:36:36 +0530 Sajakali Jamadar 66 of 66