

Nilesh Harakchand Lalwani vs The State Of Maharashtra on 4 February, 2022

Author: C.V. Bhadang

Bench: C.V. Bhadang

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 314 OF 2022

SNEHA NITIN CHAVAN Digitally signed by SNEHA NITIN CHAVAN Date: 2022.02.05 10:04:33 +0530	Nilesh Harakchand Lalwani V/s. The State of Maharashtra ----- Mr. Tushar Sonawane for the Applicant. Mr. R.M. Pethe, APP for the Respondent/State. API Manojkumar Navasare, Rajgad Police Station, Pune present. -----	..Applicant ..Respondent
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CORAM : C.V. BHADANG, J.

DATE : 4 FEBRUARY 2022
(Through Video Conferencing)

P.C.

. The Applicant, apprehending his arrest, in connection with investigation of Crime No.19/2022 of Police Station Rajgad District Pune, under Section 188, 269, 273, 328 of IPC and Section 26(2)(i), 26(2)(ii), 27(3)(c), 27(3)(e) and 59 of the Food Safety and Standards Act, 2006 and Section 2, 3 and 4 of the Epidemic Diseases Act, is seeking anticipatory bail.

2. The learned counsel for the Applicant submitted that the only section which is non bailable is Section 328 of IPC. The learned counsel has placed reliance on the decision of the

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Supreme Court in Joseph Kurian & Anr. Vs. State of Kerala 1 and the order dated 30 September 2021, passed in a batch of Anticipatory Bail Applications No.944 of 2020 and others, at the Aurangabad Bench, in order to submit that in similar circumstances, it has been held that Section 328 of IPC may not be attracted as there was no attempt to administer any intoxicant or stupefying substance by the Applicant with an intention to commit an offence. The learned counsel further pointed out that the learned Single Judge of this Court at Mumbai has taken a contrary view by order dated 6 November 2020 in ABA (Stamp) No.2489/2020 which order is subject matter of challenge before the Supreme Court in Special Leave to Appeal (Cri.) No.6788/2021. It is pointed out that the Supreme Court by an order dated 21 September 2021 has granted interim protection to the Petitioner therein.

3. Learned APP seeks time to examine and go through the judgments on which the reliance is placed on behalf of the Applicant and then to make appropriate submissions to further assist the Court.

4. Prima facie, it appears that the learned Single Judge sitting at Aurangabad Bench, has taken a view that Section 328 of IPC may not apply in such a case. The contrary view taken by the Coordinate Bench at Mumbai is subject matter of challenge 1(1994) 6 Supreme Court Cases 535

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before the Supreme Court in which interim protection has been granted. Hence, the following order is passed.

ORDER

i) In the event of his arrest in connection with investigation of Crime No. 19/2022 of Police Station Rajgad, District-Pune, the Applicant be released on bail on executing a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

ii) The Applicant shall report to Investigating Officer on 9, 10, and 11 February 2022 between 11.00 a.m. to 1.00 p.m. and as and when directed by the Investigating Officer.

iii) The Applicant shall cooperate with the Investigating Agency and shall not tamper with the prosecution evidence / witnesses.

iv) This order shall remain in force till next date.

v) Stand over to 18 February 2022.

(C.V. BHADANG, J.)

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