

Guddu @ Raj Ilyas Sayyad vs State Of Maharashtra on 5 July, 2023

Author: Amit Borkar

Bench: Amit Borkar

2023:BHC-AS:18288

902-aba1804

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1804 OF 2023

Guddu Alias Raj Ilyas Sayyad	... Applicant
V/s.	
The State of Maharashtra	... Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.1807 OF 2023

Ramvilas S. Lohiya	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Ganesh Gole i/by Mr. Ateet Shirodkar for the
applicant.

Mrs. Veera Shinde, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JULY 5, 2023

P.C.:

1. The applicant in each Anticipatory Bail Application is seeking relief under Section 438 of the Criminal Procedure Code, 1973 in connection with C.R. No.230 of 2023 registered at Nashik Road Police Station, District Nashik dated 18 May 2023 for offences punishable under Sections 328, 272, 273, 328 read with Section 34 of the Indian Penal Code, 1860 and under Section 26(2)(i)(v), 27(3)(e), 3(1)(zz)(iv) and 59 of the Food Safety and Standards Act, 2006.

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2. The case of prosecution is that on a complaint received from Manohar Shinde, Head Constable alleging sale of contraband substance. On 17 May 2023 at 10.30 p.m. they reached the spot when accused No.2 came to the spot on a black splendor and handed over one white gunny bag to the accused No.1 who is present in Amol General Stores. The investigating agency intercepted the accused No.2 and seized the bike and gunny bag. They also seized the gunny bag from Amol General Stores and found contraband substances such as pan masala and gutkha, flavoured pan masala was found in the bags. Accordingly, report was lodged.

3. Apprehending arrest, the applicants filed applications under Section 438 of the Criminal Procedure Code, 1973 before the Sessions Court. The learned Additional Sessions Judge-2, Nashik rejected the application by order dated 19 June 2023. The applicant has, therefore, filed present anticipatory bail application.

4. Learned advocate for the applicants submitted that the applicants have not been named in the first information report. He has been falsely implicated. According to him, there is no material to show that the applicants have administered contraband substance. The prohibited substances has been seized and, therefore, custodial interrogation of the applicants is not necessary. FSL report is not yet received. They are ready to cooperate with the investigation.

5. Per contra, learned APP submitted that the applicants are in the business of supplying prohibited substances. It is necessary to unearth traces of larger supply of banned substances. He submitted that the coordinate Benches of this Court in case of Sagar Sadashiv Kore v. State of Maharashtra, reported in 2021 SCC OnLine Bom 6568 and in Ankush v. State, thr PSO, reported in 2020 SCC OnLine Bom 11384 and Pathan Shafi Khan Rehemat Khan v. State of Maharashtra reported in 2021 SCC OnLine Bom13367 and unreported judgment of this Court in Anticipatory Bail Application No.483 of 2021 (Mohammed Ali Raheman Alias MohammedAli Abdul Raheman Shaikh v. The State of Maharashtra) decided on 24 March 2021 refused to grant pre-arrest protection to the applicants therein having similar role attributed to the applicants therein.

6. I have considered the submissions on behalf of both the sides. Prima facie, persons from whom prohibited substance was seized have named applicants as suppliers. Considering the nature of allegations against the applicants, it is necessary that detailed investigation as regards existence of any racket operating in prohibited substance need to be investigated. It is also necessary to investigate source of such supply and acquisition. It is also necessary to investigate into the names and identity of purchasers of the prohibited substance from the applicants. In so far as FSL report is concerned, it will be received by the investigating agency during investigation. However, for adjudicating prima facie case receipt of such report is not necessary.

7. Learned Single Judge of this Court in Ankush (supra) in paragraph 8 observed thus:

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"8. It is not in dispute that Gutka (chewing tobacco made from crushed areca nut, tobacco, catechu, paraffin wax, slaked lime etc.) and Pan Masala (combination of betel leaf and areca nut with or

without tobacco) are seriously detrimental to health and the consumption thereof is identified as a major cause of oral cancer. The said products contain carcinogens and are known to be highly addictive. The State Government has exercised, from time to time, the statutory power under the FSS Act to prohibit the manufacture, storage, distribution and transport or sale of tobacco, whether flavoured, scented or mixed with other ingredients such as nicotine, menthol etc."

8. The coordinate Bench has relied upon an unreported judgment of the Division Bench of this Court (Aurangabad Bench) in the case of Zahir Ibrahim Panja v. State of Maharashtra in Criminal Application No.4968 of 2016.

9. In the case of Pathan Shafi Khan Rehemat Khan (supra), co-ordinate Bench of this Court has considered the issues of applicability of Section 328 of the Indian Penal Code. I respectfully agree with the views taken by the co-ordinate Bench.

10. The applicant in Anticipatory Bail Application No.1807 of 2023 has antecedents of similar offences to his discredit. Therefore, in my opinion, considering the allegations against the applicant, no case for grant of pre-arrest protection is made out.

11. Both the anticipatory bail applications are, therefore, rejected. No costs.

(AMIT BORKAR, J.)