

J. Ratnesh Nagar vs State Of Maharashtra on 22 June, 2022

Author: Bharati Dangre

Bench: Bharati Dangre

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1588 OF 2022

J. Ratnesh Nagar		.. Applicant
	Versus	
The State of Maharashtra		.. Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.1587 OF 2022

Dinesh @ Raju Lalman Gupta		.. Applicant
	Versus	
The State of Maharashtra		.. Respondent

...

Mr.Harshad Sathe i/b Saurabh Butala for the applicants.
Mrs.A.A.Takalkar, APP for the State.
PI Shri Rahul Rakh from Crime Branch present.

CORAM: BHARATI DANGRE, J.
DATED : 22nd JUNE, 2022

P.C:-

1 Heard learned counsel for the applicants and learned
APP for the State.

2 The applicants are apprehending their arrest in
C.R.No. 183/21 registered with Mira Road police station

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invoking Sections 328, 188, 273 r/w Section 34 of IPC and Section 26(2)(4), 30-2(A) of Food Safety and Standards Act, 2006.

3 On 27/4/2022, on a secret information being received to the effect that prohibited substance in form of Gutka, pan masala, scented tobacco, and mixture of betel nut was being transported. A raid was conducted and some white bags were recovered from the back seat of the rickshaw. The said bags contained the prohibited substance and the rickshaw driver as well as the persons accompanying him were brought to the police station. The prohibited substance was found to be worth Rs.37,800/- (SHK Gutka) Rs.23,700/- (Vimal Gutka) and Tobacco worth Rs.2,640/-. Some other accused persons were arrested and in remand report, the name of the applicants were surfaced as supplier of the prohibited substance. That is how they are named as accused in the C.R.

4 Barring the offence u/s.328 of the IPC, all other offences are bailable. The position of law whether an offence u/s.328 gets attracted when the prohibited substance, is transported or supplied, but it is caused to be consumed is attracted or not, till date, is not crystallized.

A decision of the Division Bench of this Court in case of Anand Ramdhani Chaurasiya & Anr Vs. The State of Maharashtra [(2019) SCC Online Bombay 1857], where a view

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

5 Considering the conundrum of the applicability of

provisions of Section 328 in a situation like this, and since the issue is pending before the Hon'ble Apex Court, pursuant to the view of the Division Bench of this Court and since judgment of the Division Bench taking a view that it cannot be invoked, has been stayed, the following ad-interim order would serve the purpose of justice for the time being. Hence, the following order:-

ORDER

(a) By way of ad-interim order, in the event of their arrest, the Applicant - J. Ratnesh Nagar in ABA No.1588/22 and the applicant - Dinesh @ Rahu Lalman Gupta in ABA No.1587/2022 in Tilak 4/4 20 ABA 1588-22.doc connection with C.R.No.183/2022 registered with Mira Road Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.50,000/- each with one or two sureties of the like amount.

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

(c) The Applicants shall report to the Police Station on every Friday and Saturday between 10.00 am to 2.00 p.m for a period of two weeks and render all his co-operation to the Investigating Officer.

List on 1/8/2022.

(SMT. BHARATI DANGRE, J.) Tilak