

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

906 ANTICIPATORY BAIL APPLICATION NO.461 OF 2020

Satish s/o Prakash Jaiswal,
Age 38 years, Occ: Business
R/o Gopikishan Nagar, Jalna

... Applicant

VERSUS

The State of Maharashtra
(Thr. Chandanzira Police Station Jalna)

... Respondent

...

Advocate for Applicant : Mr. N.S. Ghanekar
APP for Respondent/State : Mr. S.B. Narwade

...

CORAM : MANGESH S. PATIL, J.

DATE : 25.06.2020

PER COURT :

Heard both the sides. The applicant is seeking Anticipatory Bail under Section 438 of the Code of Criminal Procedure in connection with Crime No.0165/2020 registered with Chandanzira Police Station, Jalna for the offences punishable under Sections 188, 272, 273, 328 read with Section 34 of the Indian Penal Code and under Sections 26, 26(2)(i), 26(2)(iv), 27(3)(e) and 59 of the Foods Safety and Standard Act and Section 51(b) of the Disaster Management Act, 2005.

2. It is alleged that on 20.05.2020 the other two accused were found carrying many packets of Gutkha / scented tobacco worth lakhs of

rupees. They were accosted with their vehicle and were arrested. The crime was registered.

3. The learned advocate for the applicant submits that the allegations against the applicant are only about he having supplied the goods to the co-accused. The offence punishable under Section 328 of the Indian Penal Code is the only non-bailable offence. The other offences being applied are bailable one. He was not present at the spot and has not obstructed the Public Servant. The Provisions of Disaster Management Act would not be applicable against him and even if those are assumed to be applicable, the offence punishable under Section 51 of the Disaster management Act is bailable one. The applicant is ready to co-operate the Investigating Officer. There being no allegations about the Gutkha/scented Tobacco having been administered to anybody, the provision of Section 328 of the Indian Penal Code is not attracted. The applicant may be granted bail.

4. The learned APP opposes the application. He submits that the offence is serious. Consumption of tobacco/gutkha during the Pandemic of Covid-19 would certainly be dangerous to human life. Huge quantity of gutkha/scented tobacco has been found being transported by the co-accused. The applicant is the supplier. His custodial interrogation is necessary and the application may be rejected.

5. I have carefully perused the police papers. Admittedly, except the offence punishable under Section 328 of the Indian Penal Code, the

other offences been charged/pressed against the applicant/co-accused are all bailable. This Court has consistently held that in order to attract the provision of Section 328 of the Indian Penal Code there must be an allegation about administration of the poisons substance. No such allegations being levelled against the applicant and the co-accused. They have been found to be in custody of gutkha/scented tobacco, which allegations are also only against the co-accused. The applicant is only alleged to have supplied those goods to the co-accused. He was not present/found at the spot. Considering all these aspects, this is a fit case where the applicant deserves to be granted Anticipatory Bail subject to usual conditions.

6. The application is allowed. In the event of arrest of the applicant in connection with Crime No.0165/2020 registered with Chandanzira Police Station, Jalna for the offences punishable under Sections 188, 272, 273, 328 read with Section 34 of the Indian Penal Code and under Sections 26, 26(2)(i), 26 (2)(iv), 27(3)(e) and 59 of the Foods Safety and Standard Act and Section 51(b) of the Disaster Management Act, 2005, he shall be released on bail on his executing personal recognizance for an amount of Rs.15,000/- and furnishing solvent surety in the like amount subject to the following conditions:

- a) He shall attend the concerned police Station as and when called by the Investigating Officer and shall cooperate him till filing of the charge sheet.

- b) He shall not tamper the evidence or influence the witnesses.
- c) He shall not repeat the crime.

(MANGESH S. PATIL, J.)

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