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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3748 OF 2026

The State of Maharashtra (Through Raigad Police Station, Pune)	...Petitioner (Orig. Complainant)
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Vs.

Mr. Anurag Awasthi Proprietor of Shiv Traders	...Respondent (Orig. Accused)
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Mr. S.V. Walve, APP for the Applicant-State.
Mr. Satyavrat Joshi (through VC) a/w. Mr. Priyesh More and Navaz Durdi, for the Respondent.

**CORAM: MADHAV J. JAMDAR, J.
DATE : 9th SEPTEMBER, 2026**

JUDGMENT :

1. Heard Mr. Walve, learned counsel appearing for the Petitioner-State and Mr. Joshi, learned counsel appearing for the Respondent.

2. By this Writ Petition, the State of Maharashtra has challenged order dated 6th June 2026 passed by learned JMFC, Court No.1, Pune in Criminal M.A. No.3069 of 2029 by which, the Police Station Officer, Rajgad Police Station has been directed to handover the interim custody of the Vimal Pan Masala (total 115 bags/Goni) and Vimal Tobacco (total 25 bags/Goni) (“**Gutkha**”) seized in Crime No. 166 of 2026 by Police Station, Rajgad, Pune

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for the offences punishable under Sections 123, 223, 274, 275 of Bharatiya Nyaya Sanhita, 2023 and Sections 7(2), 20(2) and 59 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and Sections 26(2) (i), 26(2)(iv) and 59 of the the Food Safety and Standards Act, 2006 to the Respondent, after executing indemnity bond of Rs.80,32,800/-. The said impugned order dated 6th June 2026 has been challenged by the State of Maharashtra by filing Criminal Revision Application No. 219 of 2026 in the Court of learned Additional Sessions Judge, Pune at Pune and learned Additional Sessions Judge, by impugned order dated 30th June 2026, rejected said Criminal Revision Application.

3. It is the submission of Mr. Walve, learned APP that although contention is raised that the said Vimal Pan Masala and Vimal Tobacco were transported from Karnataka to Rajasthan, in fact, the said Gutkha was sold at Pune and therefore offence is registered. To substantiate, his case, learned APP pointed out that in fact 100 bags of Vimal Pan Masala and 100 bags of scented chewing tobacco were purchased by the Respondent from Karnataka,

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however, after lodging of the F.I.R., as per the Panchnama dated 28th April 2026 only 150 bags were seized. He, therefore, submitted that it is obvious that the Gutkha has been sold in Pune. He submits that sale of Gutkha is prohibited by the State of Maharashtra. He has relied on an order passed by Commissioner of Food Safety, Food and Drugs Administration, Government of Maharashtra, dated 16th July 2025 (“**Order dated 16th July 2025**”), by which Gutkha has been declared as having extremely harmful effects, and therefore, the same is banned in the State of Maharashtra.

4. On the other hand, Mr. Joshi learned Counsel appearing for the Respondent submitted that the said subject goods, i.e., Vimal Pan Masala and Vimal Tobacco were being transported from Karnata to Rajasthan and the route is through Pune, therefore, the said goods were seized by the police officials of Rajgad police station. He submits that however the subject goods were not intended to be sold in the State of Maharashtra. He submits that the transportation of Gutkha in Maharashtra is not banned. To substantiate said contention, he has relied on a decision of Division Bench of this Court (Nagpur Bench) in the case of **Mohammad**

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Yasmin Naeem Mohammad & 3 Ors. Vs. The State of Maharashtra & Anr. ¹. He, therefore submits that the Writ Petition be dismissed.

5. Perusal of the record shows that there is some substance in the contention raised by learned counsel appearing for the Respondent that the transportation of Gutkha is not banned in the State of Maharashtra. The relevant paragraphs of judgment in the case of **Mohammad Yasmin Naeem Mohammad** (supra) are paragraphs 20 to 23, which read as under :

“20. Article 246 (2) & (3) of the Constitution empowers the legislature of any State to make laws for the State or any part thereof, subject to clause (1) and (2) of Article 246. Entry-42 in List I - Union List of the seventh Schedule [Article 246(1)] relates to Inter - State trade and commerce. Entry-26 in List II - State List of the seventh Schedule [Article 246(2)] relates to trade and commerce Cri. WP 543 of 2020.odt within the State, subject to the provision of Entry-33 of List III. Entry-33(b) of List III - concurrent list of the seventh Schedule

1 Criminal Writ Petition No. 543 of 2020 dt. 9th January 2021

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[Article 246(3)] relates to trade and commerce in, and the production, supply and distribution of foodstuffs.

21. The contention of Mr. Bhangde, learned Senior Counsel for the petitioners that by virtue of the impugned order, dated 15/7/2020, the State has usurped the power of the Union by making a law prohibiting inter-State trade and commerce, which is solely within the domain of the Union, is not correct. This is so for the reason, that the FSSA is a Central Statute enacted by the Parliament and by virtue of Section 30(1) of the FSSA, certain powers have been delegated to the State and it is under these powers, that the Commissioner for Food Safety has been appointed to perform functions as listed in Section 30(2) (a) to (f) of the FSSA. Thus, any Notification issued by the Commissioner of Food Safety, is directly relatable to the exercise of the powers under the FSSA and is not an independent power exercised by the State by enacting / passing any law/legislation in respect of the subjects in Entry-26 List II or Entry- 33 List III of the seventh schedule to the constitution.

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22. We have already stated that the domain or jurisdiction of the Commissioner of Food Safety is within the State and thus the impugned order dated 15/7/2020 will have to be read as not creating or imposing any ban on any inter-State transport of goods. This would however not mean that the Authorities, empowered to enforce the prohibition as contained in the Order dated 15/7/2020, would in any way, be restrained from ensuring that the prohibition as imposed, is enforced. In this context, it would not be out of place to mention here, that the order dated 15/7/2020, records that since 2012, the manufacturing, production and transportation of the prohibited food articles, in the State was literally nil, even then the prohibited food articles were found available in small shops, godowns, distributors, suppliers, wholesalers, retailers across the market in the entire State. In spite of continuous action being taken, still such supply and distribution continues, which is under the guise of inter-State transport. In the last year the department had taken action on 1118 vehicles, who were transporting prohibited food articles under the

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guise of inter-State transport. It is axiomatic that such vehicles under the guise of inter-State transport dump the goods in the State of Maharashtra, where they are prohibited, which are then sold in the black market. It is a further matter of common knowledge, that in spite of the prohibition imposed, tobacco, Gutkha and tobacco-laced Pan Masala are easily available in the market and one of the source for such availability, is obviously dumping of such goods/material under the guise of inter-State transport.

23. The case in hand is one such example. The place of origin of the goods, is Kakadkoper, Vapi-Dharampur Road, Valsad in the State of Gujarat. The destinations are (a) Joda and (b) Post Khalari, District Angul, both in Odisha (Orissa). The place where the truck was detained is village Jaulka, Tahsil Malegaon, District Washim. The straight and perhaps the easiest route from the place of origin to the place of destination, would be through National Highway No. 8, from Valsad to Surat and thereafter through National Highway No. 6, via Maharashtra, Chhattisgarh to Bargarh, in Odisha and

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then down to Angul via National Highway No. 42. The route could also be, considering the prohibition in Maharashtra, so planned as to totally avoid the State altogether, which would be to Madhya Pradesh and Chhattisgarh. **However, the fact that the truck was found in Malegaon, District Washim, which is not even on the National Highway No. 6, would naturally raise a presumption that the goods may have been destined to be offloaded some place in Maharashtra, though the destination on paper be otherwise. Though inter-State transport would be permissible, the State Authorities would be within their rights, to seize the goods, which are prohibited within the State, so as to ensure that they are not offloaded in the State under the guise of inter-State transport, with a view to enforce the prohibition within the State and curb black marketing of such goods within the State.** Nothing prevents the transporters to plan a route, which avoids the State where the goods are prohibited. An alternate route, at the most, may increase the cost of transportation, but would save them from the clutches of prohibition. **Thus, we do not find any**

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illegality in the seizure of the vehicles, carrying the prohibited goods, which was way off the easiest route of transport.”

(Emphasis supplied)

6. However, it is significant to note that even the decision of Division Bench on which the learned counsel of the Respondent has heavily relied also records that it is axiomatic that such vehicles under the guise of inter-State transport dump the goods in the State of Maharashtra, where they are prohibited, which are then sold in the black market. It is also observed that it is a matter of common knowledge, that in spite of the prohibition imposed, tobacco, Gutkha and tobacco-laced Pan Masala are easily available in the market and one of the source for such availability, is obviously dumping of such goods/material under the guise of inter-State transport. The said observations are also applicable to the present case.

7. Thus, it is clear that as far as only transportation between Karnataka and Rajasthan is concerned, the same is not banned, and therefore, if it is the contention of learned counsel for the Respondent that it is only to be transported from State of

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Maharashtra to Rajasthan, then there would not have been any objection even by the Petitioner-State of Maharashtra. However, what is relevant to note that even as per the contention of the Respondent that they have purchased 100 bags of Vimal Pan Masala and and 100 bags of Vimal scented chewing tobacco and at the time of lodging of F.I.R. and seizure of goods only 150 bags were found, it is obvious that under the guise of inter-State transport, such goods/materials are dumped in Maharashtra. Thus, above referred observations of the Division Bench in **Mohammad Yasmin Naeem Mohammad** (supra) are squarely applicable to the facts of the present case.

8. Mr. Walve, learned APP relies on the list of documents submitted by the Respondent, i.e., Applicant in the Trial Court wherein, GST receipt shows that 100 bags of Vimal Pan Masala and 100 bags of Vimal scented chewing tobacco were purchased by the Petitioner from Karnataka. In view of the above contention, it is relevant to note that the Panchanama recorded on 28th April 2026, specifically records that only 150 bags were found in the said truck. Thus, in view of said material on record, the finding recorded by the learned Additional Sessions Judge, Pune at the fag

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end of paragraph No. 7, that there is nothing on record to show that the seized goods were transported to Pune by accused person for the purpose of its sale, distribution and storage, is not correct. The further observations of the learned Additional Sessions Judge that the discrepancies pointed out in the tax invoice relating to number of bags purchased and number of bags recovered itself, does not mean that the goods therein were uploaded at Pune or any other place in Maharashtra. The said observations is contrary to the material on record as 200 bags were purchased by the Respondent and only 150 bags were found when the goods were seized.

9. Mr. Walve, learned APP is right in pointing out paragraph Nos. 16 and 17 of said order dated 16th July 2026 of Commissioner of Foods Safety, which read as under :

“(16) Whereas, Subsequent to the Notification dated 19th July 2012, **large quantities of, *inter alia*, Gutkha and Pan Masala were being brought into Maharashtra (on the footing of being transported to places outside Maharashtra), found to be stored in trucks, vehicles and other transport facilities, and**

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large stocks of these were also distributed by leakage into the local markets in Maharashtra, Likewise such stocks which were brought to sale in Maharashtra are seized in the tune of Rs.449 crores 27 lakh in the time frame from 2012-2025. In the same period 9454 First Information Report (FIR) are filed in police stations and 10241 cases are filed in Courts.

(17) Whereas, over the years it is observed that manufacturing/production/transportation and sale of prohibited food articles are stealthily and illegally going on in Maharashtra State, since the ban from 2012. And we find all these prohibited food articles in small shops, godowns, distributors, suppliers, wholesalers, retailers etc. across the market and majority in transport vehicles. We have been taking action from 2012 on transportation still it is increasing day by day and hence required stringent action to stop these people across Maharashtra. Therefore, with prior approval of Maharashtra State Government, Food and Drug Administration with help of RTO

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issued a circular to cancel the driver's license and vehicle's license, transporting prohibited food articles.

Till March, 2025, department has taken an action on 2082 vehicles whoever transporting prohibited food article, the figure shows that the offenders were transporting and selling prohibited food articles under the name of Intra State transport. **Transport by using vehicles is one of the major tools found by such offenders to change the various places of storage immediately due to which the main offenders / owner of the prohibited food article remains safe. Due to which transport became one of the easiest mediator in this business and there is need to take legal and stringent action against such offenders."**

(Emphasis added)

10. It is required to be noted that the order dated 16th July 2025 of Food Safety Commissioner, Food and Drugs Administration, Maharashtra State clearly records that on the basis of the research done at Tata Memorial Hospital, Tata Institute of Fundamental

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Research, study conducted by Dr. James E. Hamner and others, reports by the Government Dental College, Nagpur and reports by Government Dental College, Mumbai and survey conducted by the Global Adult Tobacco Survey of India (GATS) and also some N.G.Os. show that the consumption of Gutkha is having extremely harmful effects and it was found that there is remarkable increase in number of patients. It is recorded that chewing of Gutkha leads to Oral Sub Mucous Fibrosis, and there is remarkable increase in number of patients.

11. Thus, the public interest and the health of the citizens is required to be given more importance than the commercial interest of the Respondent. Article 21 protects life and personal liberty. Supreme Court has interpreted right to life to include conditions necessary for a meaningful and healthy existence, including protection against serious threats to public health. It is settled principle that public health must receive a high constitutional priority as it is indispensable to the physical existence and welfare of the community. These principles cannot be ignored for protecting the commercial interest of the Respondent.

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12. The learned JMFC and learned Additional Sessions Judge have completely overlooked various aspects involved in the matter.

13. Accordingly, impugned order dated 6th June 2026 passed by learned JMFC, Court No.1, Pune in Criminal M.A. No. 3069 of 2026 as also order dated 30th June 2026 passed by learned Additional Sessions Judge Pune in Criminal Revision Application No. 209 of 2026 are quashed and set aside and said Criminal M.A. No. 3069 of 2026 filed by the Respondent is dismissed.

14. The State of Maharashtra is directed to take effective steps for destruction of the subject goods expeditiously.

15. Accordingly the Writ Petition is allowed in the above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]