

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (ABA) NO.472 OF 2020

(Sunil @ Jimmi Janakraj Gupta Vs. State of Maharashtra thr. PSO Ps Sakharkheda,
Dist. Buldhana)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. R.S. Kurekar, Advocate for Applicant.
Mrs. K.R. Deshpande, APP for Non-Applicant/State.
Mr. Shashibhushan Wahane, Advocate to assist the prosecution.

CORAM: ROHIT B. DEO, J.

DATE: 22nd DECEMBER, 2020.

Heard.

2. The applicant is apprehending arrest in Crime 255/2019 registered with Police Station Sakharkheda, District Buldhana for offence punishable under section 420 of the Indian Penal Code, sections 102, 103 and 104 of the Trade Marks Act, 1999 and section 63 of the Copy Right Act.

3. The crime is registered pursuant to report dated 04.11.2019 lodged by Mr. Sharad Patil, the Quality Control Assistant Manager of M/s. Shreerang Kisanlal Sarda Company. The said company claims to be exclusively entitled to use the trade mark "Unt Chhap Bidi". The substratum of the report is that the accused hatched a criminal conspiracy to exploit the popularity of the "Unt

Chhap Bidi” brand. Inferior and spurious tobacco was used, the labels of “Unt Chhap Bidi” were fraudulently printed and used on the packing and the inferior quality product was sold to unsuspecting buyers as the popular “Unt Chhap Bidi”.

4. The case of the prosecution is that the applicant is the manufacturer of the spurious goods and it was during the interrogation of the arrested co-accused that his name cropped up as the kingpin of the crime. While at the first blush, it did appear that a trade mark violation matter was being given the colour of an offence punishable under the Indian Penal Code, the material in the case diary would *prima facie* suggest otherwise. Notably, the applicant is disputing any connection with the manufacturing of the spurious *bidis*. It is not the case of the applicant that the allegations at the most disclose violation of trade mark or passing of provisions.

5. The first submission of the learned counsel Mr. Kurekar is that the applicant is not named in the first information report. That the applicant is not named in the first information report is irrelevant in the context of his name surfacing during the course of investigation.

6. The next submission of Mr. Kurekar is that as condition of interim pre-arrest protection, he attended the police station and his statement is recorded.

Custodial interrogation serves its own purpose and it is well settled that the quality of the elicitation of material during custodial interrogation and interrogation when the accused is protected by an order of pre-arrest protection, is markedly different. In view of the material discernible from the charge-sheet, denying custodial interrogation to the investigating agency would derail the investigation. The machinery used to manufacture the spurious *bidis* is not recovered/seized as yet. The various facets and contours of the crime are to be unraveled and unearthed. I am satisfied, that in the interest of effective investigation, it would be impermissible to exercise discretion in favour of the applicant.

7. The final submission of Mr. Kurekar is that there is no material to connect the applicant with the crime. Lest the accused is prejudiced, I would refrain from undertaking a microscopic examination of the material in the case diary. Suffice it to say that there is more than ample material in the case diary to connect the applicant with the crime. This is of course a *prima facie* observation. *Prima facie*, it does appear that the manufacture and sale of the spurious good is not mere violation of the provisions of the Trade Marks Act 1999, albeit the provisions of the said enactment may as well be attracted. Perusal of the Chemical Analyzer's report and the other material in the case diary would reveal that the popularity and good will of a particular brand of *bidi* was exploited and using virtually identical label and the

same name, inferior products were sold to gullible persons, as genuine products.

8. Considering that the investigation is ongoing and at a critical stage, no discretion can be exercised in favour of the applicant.

9. The application is dismissed.

JUDGE