

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

CRIMINAL APPLICATION (ABA) NO. 849/2019

Nasir Khan S/o Mahemood Khan Vs. State of Maharashtra through P.S.O. P.S.
Samraspura, Amravati Gramin, District Amravati.

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

Court's or Judge's orders.

Shri S.M. Mohta, learned counsel for applicant.
Shri V.A. Thakare, learned Additional Public Prosecutor for
non applicant/State.

CORAM : V. M. DESHPANDE, J.
DATED : 15th JANUARY , 2020

Heard Shri S.M. Mohta, learned counsel for
applicant and Shri V.A. Thakare, learned Additional Public
Prosecutor for non applicant-State.

The applicant is apprehending his arrest in
connection with Crime No.0131/2019 registered with Police
Station Samraspura, Amravati Gramin, District Amravati for
an offence punishable under Sections 188, 272, 273, 328 of
the Indian Penal Code and Sections 26, 26(2) (iv), 27 (2)
(e), 3, 30 (2)(a), 59 of the Food Safety and Standard Act.

As per the prosecution case, on 22.11.2019, a
vehicle having registration No. MH-23/BE-0434 was
intercepted by police. Driver of the said vehicle is one Javed
Ali Khan. Said vehicle was transporting prohibited flavored
Tobacco and betel nuts pouches worth Rs.7,72,200/-.
Therefore, police party intimated the said to Food Safety
Officer of the concerned department and after the due
inquiry, report is lodged on 25.11.2019.

As per the prosecution case, in the vehicle of
Javed, at the instance of one Sayyad Javed Ali, brought the

contraband to deliver it to the present applicant. The Tobacco which is injurious to health is totally prohibited in the State of Maharashtra. Its possession, transportation is prohibited in the territorial jurisdiction of State of Maharashtra. From the cause title, the applicant is shown as a businessman. According to the learned counsel for the applicant, except the statement of co-accused Javed there is nothing on record to show his complicity. According to the learned counsel, statement of co-accused is not admissible.

There cannot be dispute that statement of co-accused is not admissible in the evidence, however, presently, such a statement gives lead to the investigating officer to conduct the investigation. When such a lead is available to the investigating officer at the very threshold of the prosecution case, the investigating officer cannot be denied to conduct the investigation thoroughly to reach to the truth and to bring the truth on record. Even from the reply filed by the prosecution, though applicant has attended police station, he has not extended full co-operation to the investigating officer. Therefore, in my view, the custodial presence of the applicant is absolutely necessary looking to the societal interest, since the selling of the Tobacco is injurious to health. Hence, the application is rejected. Interim order stands vacated.

JUDGE