

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

**CRIMINAL APPLICATION (BA) NO.368/2022**

**Mohammad Tausif Mohammad Farukh and another**

**...Versus...**

**State of Maharashtra, Through P.S.O. P.S. Ner, Tq. Ner & Dist. Yavatmal**

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders or directions  
and Registrar's orders  
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Court's or Judge's orders

Shri S.A. Mohta, Advocate for applicants  
Ms T.H. Udeshi, APP for respondent

**CORAM : AVINASH G. GHAROTE, J.**

**DATE : 28/04/2022**

1. Heard Shri Mohta, learned Counsel for the applicants and Ms Udeshi, learned Additional Public Prosecutor for the respondent.

2. The applicants have been arraigned for the offence punishable under Sections 272, 273, 328 of Indian Penal Code r/w Sections 26 (2) (i), 27 (3) (e), 30 (2) (a) of the Food Safety and Standards Act, 2006 in Crime No.150/2022, registered with Police Station Ner, Tq. Ner, District Yavatmal. The applicants were arrested on 01/04/2022.

3. Shri Mohta, learned Counsel for the applicants submits that the entire contraband has been seized, and therefore, there is no necessity of the continuation of the incarceration of the present applicants, considering which, they are entitled for bail.

4. Ms Udeshi, learned Additional Public Prosecutor for the respondent/State opposes the application and submits that the material which is seized from the applicants, namely, BABA-120 premium tobacco and BABA chewable tobacco are the articles of which manufacture, production and sale is banned in State of Maharashtra, in spite of which, the applicants were found with the same, carrying the same on Activa Moped in the night of 31/03/2022 to 01/04/2022. She submits that the value of the material is immaterial and what is material is the intention of the applicants to bring the contraband into the State of Maharashtra for its sale in spite of the same having been prohibited.

5. The incident is in the intervening night of 31/03/2022 and 01/04/2022 when the applicants, who were travelling on Activa scooter bearing registration No.MH-29-BN-8996, were apprehended by the police authorities and were found to have in their possession the aforesaid contraband material, which was seized from them and they were arrested. What is material to note is that the applicants

have not cooperated with the prosecution inasmuch as they have refused to disclose the source from which the contraband material has been procured, its destination and the distribution network. In Criminal Application (BA) No.1339/2021, I have considered a similar issue and have recorded the observations of the Hon'ble Apex Court in ***Union of India and others Vs. Unicorn Industries, (2019) 10 SCC 575*** regarding the harmful effects of tobacco and Panmasala and the large scale availability of the same in spite of it being prohibited, in every nook and corner of the State, which indicates a Statewide network of getting the prohibited material inside the said State by any means whatsoever and selling the same for consumption. In the present case also, considering that the contraband material was being transported in the intervening night of 31/03/2022 and 01/04/2022 and the attitude of non-cooperation of the applicants, which is reflected, from the order dated 16/04/2022, passed by the learned Session Court while rejecting the application for bail, in my considered opinion, the applicants do not deserve to be enlarged on bail, considering which, the criminal application is rejected.

(AVINASH G. GHAROTE, J.)