



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

CRIMINAL APPLICATION NO.93 OF 2025

Omprakash Sunil Manapure, r/o Rani
Laxmibai Chowk, Ward No. 15,
Lodhikhedha, Sausar, District
Chhindwara, Madhya Pradesh – 480108,
Mob. 9669496130

... APPLICANT

VERSUS

The State of Maharashtra, through
Police Station Kelwad, Nagpur
(Rural) (Maharashtra)

... NON-APPLICANT.

Shri Arjun Raoka Jaain, Advocate for the applicant.
Shri A.R. Chutke, Addl.PP. for the State.

CORAM : NITIN B. SURYAWANSHI AND
PRAVIN S. PATIL, JJ.

CLOSED ON : 20.03.2025.

PRONOUNCED ON : 05.05.2025.

JUDGMENT : (Per : Pravin S. Patil, J.)

1. Heard. ADMIT.

2. The matter is taken up for final disposal by consent of both the parties.

3. This application filed under Section 482 of the Code of Criminal Procedure /Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking to quash the First Information Report No.15 of 2024 registered with the Kelvad Police Station, Nagpur Rural for the offence punishable under Sections 188, 328, 273, 272 of the Indian Penal Code, Sections 59, 30(2)(a), 27(3) (e), 26(2)(iv), 26(2)(i) of the Food Safety and Standard Act (for short hereinafter referred to as 'the Act'), 2006.

4. After hearing the matter, we have closed the same for order. However, after perusal of the record, we find that in the entire record including FIR and other relevant documents, the name of applicant is shown as 'Aakash Manapure'. Only in the order passed by the Adhoc District Judge-5, Nagpur in Criminal Bail Application no.518 of 2024, the name of applicant was shown as 'Omprakash @ Aakash s/o Sunil Manapure'. We called upon learned Counsel for the applicant to explain this anomaly.

Accordingly, Counsel for the applicant by Pursis dated 03.04.2025 placed on record a copy of Criminal Bail Application No.518/2024 which was filed by the applicant, by mentioning his name as “Omprakash @ Aakash S/o Sunil Manapure, occupation – Business, R/o Rani Laxmibai Square at Lodhikheda, Tahsil - Sausar, District – Chhindwara, Madhya Pradesh. The Purshis is taken on record and marked “X” for identification. It is, thus, clear that Omprakash and Aakash s/o Sunil Manapure is one and the same person.

7. The case of the prosecution is that on 14.01.2024, informant/Assistant Police Inspector Amit Pande received secrete information while he was on patrolling duty along with other police staff, that two cars from Sausar, M.P., are proceedings towards Nagpur via Kelwad by illegally transporting prohibited food articles like scented tobacco, gutkha and pan masala. During intercepting the vehicles, Toyota Innova car bearing registration no.MH-31-CR-4241 and one Maruti Swift car bearing registration no.MH-43-BA-1236 found to be transporting the prohibited articles. Upon inquiry, it is revealed that the accused persons

brought prohibited food articles from the present applicant, who is resident of Lodhikheda, M.P. for selling it at Nagpur to one Pratik Jadhav.

8. During investigation, it is further revealed from the disclosure statement of accused no.1 Suraj @ Surya Raju Mokhade, that accused persons were transporting the prohibited food articles on the say of accused Pratik Gajbhiye from the shop of accused i.e. present applicant Aakash Manapure. As such on the basis of statement of co-accused, applicant is added in the array of accused in crime No.0015/2024 registered with Police Station Kelwad, District Nagpur.

5. It is the case of applicant that he is a businessman, having grocery shop in the name and style M/s Sandeep Kirana, at Lodhikheda, Sausar, Chhindwara, Madhya Pradesh ('M.P.'). According to him, he is permanent resident of same village. To support this submission, he has placed on record copy of Aadhar Card and his bank details to show his domicile status. It is his further submission that in the State of M.P., there is no

prohibition/restriction to sell scented tobacco, and therefore, the offence registered against him is totally erroneous, invalid and incorrect.

9. From the prosecution case, it is clear that other accused persons purchased the prohibited food articles from the shop of the applicant. And on the statement of co-accused, applicant has been arrayed as an accused. It is well settled position of law that statement of co-accused is not admissible evidence to implead any person as an accused in the offence.

10. It is not the case of the prosecution that scented tobacco is prohibited article in the State of Madhya Pradesh. In these circumstances, the State has failed to point out as to how the applicant, who is authorized to sell these articles in Madhya Pradesh can be made accused in the present crime.

11. This Court, in *Shankarlal s/o Chandulal Tanwani vs. State of Maharashtra and anr. (Criminal Application No.1395 of 2023)* has held that, as Accused person being resident of MP State and as there is no prohibition to sell of scented tobacco and other

food articles, which are prohibited in Maharashtra State, he cannot be prosecuted by the State of Maharashtra. Applicant's case is squarely covered by this decision, which is rendered in similar facts.

12. In the light of aforesaid factual as well as legal position, we are of the view that, the applicant has made out a case for invoking extra-ordinary jurisdiction.

13. In the result, the application is allowed. First Information Report No.015 of 2024 registered with the Kelvad Police Station, Nagpur Rural for the offence punishable under Sections 188, 328, 273, 272 of the Indian Penal Code, Sections 59, 30(2)(a), 27(3)(e), 26(2)(iv), 26(2)(i) of the Food Safety and Standard Act is hereby quashed and set aside to the extent of present applicant – Omprakash Sunil Manapure only.

(PRAVIN S. PATIL, J.)

(NITIN B. SURYAWANSHI, J.)

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