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

CRIMINAL APPLICATION (APL) NO.131 OF 2025

Prasad s/o Dattatrey Rajkondawar,
Aged 46 Years,
Occupation : Business,
R/o. C/o. Dattatrey Rajkondawar,
Azad Ward No.02, Etapalli,
Taluka Etapalli,
District Gadchiroli.

.... APPLICANT

// VERSUS //

1. State of Maharashtra, Through
Police Station Officer,
Aheri Police Station,
Taluka Aheri and
District Gadchiroli.
2. Food Safety Officer,
Food and Drug
Administration (M.S.)
Gadchiroli.

.... NON-APPLICANTS

Mr. S. A. Mohta, Counsel for the applicant.
Ms. Sneha Dhote, APP for non-applicants/State.

**CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.
RESERVED ON : 25 .09.2025
PRONOUNCED ON : 09.10.2025**

JUDGMENT : (PER : URMILA JOSHI-PHALKE, J.)

1. **Admit.**
2. Heard finally with the consent of the learned Counsel
of the parties.

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3. Present application is filed by the applicant for quashing of the First Information Report in connection with Crime No.324/2021 dated 17.08.2021 registered under Sections 188, 273 read with 34 of the Indian Penal Code and under Sections 26(2)(iv), 30(2)(a) and 59 of Food Safety and Standards Act, 2006 and consequent proceeding arising out of which SCC No.460/2022 pending before the Judicial Magistrate First Class, Aheri, District Gadchiroli.

4. The crime is registered against the present applicant on the basis of report lodged by Suresh Posanna Torem, the Food Inspector, on an allegation that the Investigating agency received a secretary information that one Navin Nagesh Samudralwar co-accused is transporting the contraband articles like Tobacco contravening the provisions of the Food Safety and Standards Act, therefore, raid was conducted and he was found in possession of contraband Tobacco as well as scented nuts which was seized. During the inquiry, as to the procurement of the said contraband, he disclosed the name of the present applicant and on the basis of the said disclosure, he is arrested by the investigating agency.

5. Heard learned Counsel for the applicant, who submitted that except the statement of the co-accused, there is no material collected by the investigating agency during the

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investigation to show that the present applicant was in possession of the said contraband articles in contravention of the provisions of the Food Safety and Standards Act. None of the statements show the involvement of the present applicant as to supply of the said contraband articles to the other co-accused. He submitted that even no investigation was conducted to ascertain whether the present applicant is dealing with the said contraband articles or not. Thus, at this stage, no *prima facie* case is against the present applicant, and therefore, the First Information Report against him be quashed.

6. Learned APP strongly opposed the same with contention that in view of the notification issued by the Government, especially the Assistant Commissioner, Food and Drug Administration (Maharashtra State), Gadchiroli vide Notification No.AsuMaA/Notification 500/7, dated 15.07.2021, by which tobacco, Kharra and nuts (whether flavored, scented, or containing other ingredients such as nicotine, heavy metals, binders, silver foil, anti-caking agents, flavoring agents, or any other prohibited chemicals), individually or in combination, fall in the category of 'food' as defined under Section 3(1)(j) of the Food Safety and Standards Act 2006. In the interest of public health, manufacturing, storage, distribution, transportation, and sale of gutkha, pan masala, flavored/ scented tobacco, flavored /

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scented nuts and other such adulterated chewing tobacco products were banned in the State of Maharashtra. He submitted that on 17.08.2021 at around 11.30 a.m., pursuant to a letter received from Police Station Aheri, the complainant visited Aheri Police Station along with one witness. The complainant was informed that on 16.08.2021 at around 8.15 p.m., a stock of prohibited flavored tobacco had been seized from the possession of the co-accused and deposited at Police Station. So, the involvement of the present applicant reveals during the investigation and therefore, *prima facie* case is made out against the present applicant.

7. In view of the observation of the Hon'ble Apex Court in the case of State of **State of Haryana and others Vs Bhajan Lal and others** reported in **1992 Supp. (1) SCC 335** wherein following principles / guidelines are laid down by the Hon'ble Apex Court for consideration of the application under Section 482 of Cr.P.C.

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation

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by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for

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wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8. In the light of the above principles, if the facts of the present case are taken into consideration, except the statement of the co-accused, admittedly, there is no material collected against the present applicant to proceed against the present applicant. No purpose would be served by forcing the present applicant to face the trial. On perusal of the entire investigation papers, we do not find any material which would connect the present applicant with the alleged offence, as far as the allegation on the basis of the statement of the co-accused that he has procured the said tobacco and scented nuts from the present applicant. Therefore, we inclined to exercise the jurisdiction under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (under Section 482 of the Code of Criminal Procedure), hence we proceed to pass following order.

ORDER

(i) The application is **allowed**.

(ii) The First Information Report in connection with Crime No.324/2021 dated 17.08.2021 registered with Police Station Aheri, District Gadchiroli for the offence punishable under Sections 188, 273 read with 34 of the Indian Penal Code and under Sections 26(2)(iv), 30(2)(a) and 59 of Food Safety and Standards Act, 2006 and charge sheet No.12/2022 dated 09.11.2022 arising out of

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which SCC No.460/2022 pending before the Judicial Magistrate First Class, Aheri, District Gadchiroli, are hereby quashed and set aside to the extent of present applicant Prasad s/o Dattatrey Rajkondawar.

The application is disposed of in the above said terms.

(NANDESH S. DESHPANDE, J) (URMILA JOSHI-PHALKE, J)

Sarkate.