



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

CRIMINAL APPLICATION (APL) NO. 870 OF 2025

Sunil s/o Bashakram Ferwani Vs State of Maharashtra and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.A. Mohta, counsel for applicant.

Ms. M.A.Barbde, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 14/07/2025.

1. Heard.
2. The challenge is to the order dated 18/06/2025 passed by the Food Safety Officer, purporting to seal the grocery shop of the applicant under the name of Jyoti Kirana Shop and General Stores.
3. The complainant, Seema Ram Surkar, Food Safety Officer, Food and Drug Administration, Yavatmal, lodged a complaint on 18/06/2025, stating therein that she is a public servant and, in view of the provisions of section 87 of the Act of 2006, has conducted a raid on 18/06/2025 at about 12:45 at the shop of the applicant. Wherein, one Manish Nandkishor Ferwani was present and was looking after the daily affairs of the shop. The Food Safety Officer found that Manish Ferwani had stored the contraband articles in the shop of the applicant. The said Manish Ferwani has stored

contraband articles i.e. scented tobacco, pan masala, and betel nut, in the shop for the purpose of sale. The Food Safety Officer conducted the raid in presence of the panchas and seized the aforesaid contraband articles from the shop and thereafter lodged the complaint with respondent No. 1.

4. The Food Supply Officer has submitted the panchanamas conducted by him and also seized contraband articles. The notification issued by the Commissioner of Food and Drugs Administration dated 12/07/2024, and the inquiry conducted by the Food Safety Officer of the Food and Drugs Department, Yavatmal. The investigating officer arrested the accused, Manish Ferwani, on 18/06/2025 at about 11.50 p.m.

5. Heard learned counsel for the applicant and learned APP for the State.

6. Learned counsel for the applicant submitted that the impugned action constitutes a gross abuse of administrative power. The contraband articles are already seized and the circular to which a reference is made, does not empower the Food Safety Officer to seal the business establishment, and even otherwise, such circulars cannot override the statutory provisions.

7. Learned APP strongly opposed the said application and therefore submitted that, in view of the circular, the said powers are used by the food safety

officer, in view of that, the application deserves to be rejected.

8. Sub-Rule (4) of Ruile 2.1.3 of the Food Safety and Standards Rules, 2011 deals with the powers and duties which is reproduced as under :-

“4. Powers and Duties - (i) Without prejudice to the powers conferred on him under section 38 of the Act, where the Food Safety Officer is of the opinion or he has reason(s) to be recorded in writing that in the given situation it is not possible to comply with the provision of section 38(1)(c) or the proviso to section 38(1) for reasons like non availability of the Food Business Operator, the Food Safety Officer may seize the adulterant or food which is unsafe or sub-standard or mis-branded or containing extraneous matter, may seal the premises for investigation after taking a sample of such adulterant or food for analysis.

(ii) Where the Food Safety Officer is of the opinion or he has reason(s) to believe that any person engaged in selling, handling or manufacturing any article of food is suffering from or harbouring the germs of any infectious disease, he may cause such person to be examined by a qualified medical professional duly authorized by the Designated Officer.

Provided that where such person is a female, she shall be examined by a qualified lady medical professional duly authorized by the Designated Officer.

If on such examination the qualified medical professional certifies that such person is suffering from any such disease, the Food Safety Officer may by order in writing under intimation to the Designated Officer direct such person not to take part in selling or manufacturing any article of food.

(iii) Furthermore, it shall be the duty of the Food Safety Officer

(a) To inspect, as frequently as may be prescribed by the Designated Officer, all food establishments licensed for manufacturing, handling, packing or selling of an article of food within the area assigned to him;

(b) To satisfy himself that the conditions of licenses are being complied with by each of the Food Business Operators carrying on business within the area assigned to him and report to the Designated Officer;

(c) To procure and send for analysis if necessary, samples of any article of food which he has reason to believe or on the basis of information received including from a purchaser are being manufactured, stocked or sold or exhibited for sale in contravention of the provisions of the Act, Or rules and regulations framed thereunder;

(d) To draw samples for purposes of surveillance, survey and research, which shall not be used for prosecution;

(e) To investigate any complaint which may be made to him in writing in respect or any contravention of the provisions of the Act, or rules framed thereunder;

(f) To maintain a data base of all Food Business within the area assigned to him;

(g) To recommend Designated Officer to issue of improvement notices to the Food Business Operator whenever necessary;

(h) To maintain a record of all inspections made and action taken by him in the performance of his duties, including the taking of samples and seizure of stocks, and to submit copies of such records to the Designated Officer as directed in this regard;

(i) To make such inquiries and inspections as may be necessary to detect the manufacture, storage or sale of articles of food in contravention of the Act or rules framed thereunder;

(j) To stop and inspect any vehicle suspected to contain any unsafe food or food which does not comply with the provisions of this Act and rules, intended for sale or delivery for human consumption;

(k) To recommend to the Designated Officer giving specific grounds, suitable action in regard to licenses issued to any Food Business Operator, if on inspection the Food Safety Officer finds that the Food Business Operator had violated the conditions for grant of license;

(l) To carry out food safety surveillance to identify and address the safety hazards;

(m) To respond to incidents of food poisoning in his area and to send report to and assist the Designated Officer to enable him to initiate corrective action;

(n) To facilitate preparation of Food safety plans for Panchayat and Municipalities in accordance with the parameters and guidelines given in schedule IV of Chapter 3 of Regulation.

(o) To detain imported packages which are suspected to contain articles of food, the import or sale of which is prohibited;

(p) To coordinate with the Food Business Operators within his area of operation and facilitate the introduction of food safety systems by the Food Business Operators.

(q) To perform such other duties, as may be entrusted to him by the Designated Officer or Food Safety Commissioner having jurisdiction in the local area concerned.

9. Prima-facie, the provision pointed out has no applicability in the facts of the case. However, no final opinion needs to be expressed if the Food Safety Officer has passed an order of sealing of the said premises. I am satisfied that the order of the sealing is a gross abuse of administrative power. The circular, which are address to made does not empower the Foods Safety Officer to see the business establishment, and even otherwise, such circular cannot override the statutory provisions.

10. In view of that, the application deserves to be disposed of. However, it is made clear that the non-applicant and the department shall be free to continue with/or initiate such actions as permissible under the law. The observation in this order shall not prejudice the department if any action is taken against the alleged violation of the act or the rules.

11. The food safety officer shall forthwith de-seal the shop and hand over the possession of the said shop to the owner of the said shop.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]