



Judgment

apl1667.24

1

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

CRIMINAL APPLICATION (APL) NO. 1667 OF 2024.

Sajidullah Khan s/o Azmatullah Khan,
Aged about 36 years, Occu - Business,
resident of 3-8-297/1, Panjesha, Panjesha
Mohalla, Adilabad, District Adilabad
(Telangana).

... **APPLICANT.**

VERSUS

1.State of Maharashtra,
through Police Station Officer,
Yavatmal Gramin Police Station,
Yavatmal, District Yavatmal.

2.Food Safety Officer,
Food and Drug Administration (M.S),
Yavatmal.

... **NON-APPLICANTS.**

Mr. S.A. Mohta, Advocate for the Applicant.
Mr. S.A. Ashirgade, A.P.P. for Non-applicants.

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

DATE : MARCH 07, 2025.

Rgd.

ORAL JUDGMENT (Per Nitin B. Suryawanshi, J.) :

Rule. Rule is made returnable forthwith. By consent of the learned Counsel for parties, the matter is taken up for final disposal.

2. This application is filed under Section 528 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS) for quashing of the first information report No.172/2024 dated 07.04.2024 and proceeding bearing R.C.C. No.326/2024 pending before the learned Judicial Magistrate First Class, Yavatmal.

3. Non-applicant no.2 - Food Safety Officer lodged the first information report stating that on 06.04.2024 he along with panch, Police Inspector Ramesh Kandure, attached to local crime branch police headquarters, Yavatmal and police staff, on receipt of secret information, proceeded to Chiddarwar Construction on Yavatmal-

Darwha Road. They intercepted one Isher Truck bearing Registration No.MH40AK7045 coming from Darwha towards Yavatmal. Prohibited food items i.e. sainted tobacco were found in the said vehicle. Driver of the vehicle Toran Sukhram Gahane, was arrested, but, he did not disclose anything as to whom the contraband articles were to be delivered. Thereafter, investigation was conducted and charge sheet was filed on 07.04.2024 against three accused persons namely – Toram Sukhram Gahane, Abhishekh Anand Prasad and Sajudulla Khan Ahmadulla Khan i.e. present applicant. Applicant seeks quashing of the first information report and proceeding numbered as R.C.C.No.326/2024.

4. Heard learned Counsel for the applicant and learned A.P.P. for Non-applicants. Perused charge sheet.

5. Learned Counsel for the applicant submits that name of applicant is not mentioned in the first information report. Provisions of Section 328 of the Indian Penal Code are not attracted in the facts

of present case. There is absolutely no material to show involvement of the applicant in present crime, hence, prosecution against the applicant is liable to be quashed.

6. Learned A.P.P. on the other hand opposed the application stating that during the course of investigation involvement of applicant was revealed, hence he is arrayed as accused.

7. Perusal of the first information report shows that applicant's name is not mentioned therein. When a specific query was made to the learned A.P.P. as to what material is there to show involvement of the applicant in the present crime, he pointed out statement of Umer Bin Ali Ali Bin Ahmed, dated 14.05.2024, who was working as Labour with the applicant. He has stated that applicant has purchased one sim card of Jio Company bearing No.7989113313 in his name, and it was being used by the applicant in his cellphone. It is alleged by the prosecution that applicant was using the said number for contacting other accused persons in the

crime. Except this, there is absolutely no evidence connecting the applicant in the present crime. Investigating Officer has failed to collect CDR showing that applicant was in constant touch with the co-accused at the time of commission of the crime. It is therefore, clear that there is no iota of evidence/material to frame charge against the applicant. Continuation of prosecution against the applicant is, therefore, an abuse of the process of Court.

8. In absence of any material to frame charge against the applicant, the prosecution against the applicant deserves to be quashed. Hence the following order.

- (i) Criminal Application is allowed.
- (ii) Criminal proceeding bearing R.C.C.No.326/2024 pending in the Court of Judicial Magistrate First Class, Yavatmal, registered on the basis of Crime No.172/2024 with Yavatmal Gramin Police Station for offence under Sections 188, 272, 273, 328 read with Section 34 of the Indian Penal Code and Sections 26[1], 26[2][iv], 27[3]

[e], 30[2][A], 3[1][zz][iv] and 59 of the Food Safety and Standard Act, 2006 is hereby quashed and set aside to the extent of applicant -Sajidullah Khan Azmatullah Khan.

9. Rule is made absolute in the aforesaid terms.

JUDGE

JUDGE