



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

CRIMINAL APPLICATION (APL) NO. 1410 OF 2024

APPLICANT :- Vinay Purushotam Bhange,
Age __ years, Occu: Business, R/o
Plot No. 25, Bhange Vihar, near
Bhavas High School, Trimurti Nagar,
Nagpur.

..VERSUS..

**NON-
APPLICANTS** :- 1) State of Maharashtra,
through its Police Inspector,
Ranapratap Nagar Police Station,
Nagpur City.
2) Gayaprasad Babulal Yadav,
Age: Major, Occu: Head Constable,
at Police Station Pratapnagar,
Nagpur.

Mr. Chitan Sandip Tamhane, counsel for applicant.
Ms. H.N. Prabhu, APP for non-applicant No.1/State.

CORAM : URMILA JOSHI PHALKE, J.

DATE : 02/04/2026

ORAL JUDGMENT :

1. Heard.
2. **ADMIT.** Heard finally with the consent of learned
counsel for the applicant, learned APP for non-applicant

No.1/State.

3. The present application is preferred by the applicant for quashing of the FIR in connection with Crime No. 349 of 2018, for the offence punishable under Sections 3 and 25 of the Arms Act, 1959; Section 135 of the Bombay Police Act, 1951; Section 84 of the Bombay Prohibition Act, 1998 and Sections 100(2) and 177 of the Motor Vehicles Act, 1988 and the consequent proceedings in Regular Criminal Case No. 210 of 2019, pending before the Judicial Magistrate First Class, Nagpur.

4. The FIR came to be registered on the basis of a report lodged by Police Naik- Gayaprasad Babulal Yadav, on an allegation that, when he was on patrolling duty along with other police officials at that time, he observed one Tata Safari Car bearing vehicle No. MH-40-AC-4450 and therefore, he intercepted the car. On his interception, one person from the car has opened the door of the car, and they found that they are under the influence of liquor. On personal search, one pistol and two cartridges were found in their possession. At the relevant time, one person fled away away from the spot.

On the basis of said report, police have registered the case against the present applicant.

5. During the course of investigation, the investigating officer recorded the statements of the witnesses, and it revealed that the person who eloped from the spot is the present applicant, and therefore, present applicant also arraigned as an accused. On completion of the investigation, the chargesheet came to filed against the present applicant.

6. Heard learned counsel for the applicant, who submitted that, as far as the present applicant is concerned, neither the offence punishable under Section 3/25 of the Arms Act, Section 135 of Mumbai Police Act and Section 84 of the Maharashtra Prohibition Act are not made out. It is further submitted that the offences under Sections 100 and 177 of Motor Vehicles Act are also not made out, as the present applicant is not the owner of the vehicle.

7. Learned counsel for the applicant pointed out that the said pistol in question was seized from the possession of accused No.1 - Rakesh Mohan Gade. The present applicant was not found in possession of any pistol or any cartridge and

he was subsequently arrested from his hotel. As far as the offence punishable under Section 84 of the Maharashtra Prohibition Act is concerned, which is also not made out as the present applicant was not found drinking the liquor, at the common drinking house. There is no no such allegations also against the present applicant and therefore, Section 84 is also not made out against the present applicant. He submitted that Section 135 is also not made out against the present applicant, as it provides the punishment for contravention of Sections 37, 39, and 40 of the Maharashtra Prohibition Act, which are not applicable in the present case.

8. Thus, it is submitted that the present applicant has been implicated merely on the suspicion. As far as the constitution of the offences alleged are concerned, which are not made out against him. None of the statements discloses his involvement and therefore, the application deserves to be allowed.

9. Per contra, learned APP strongly opposed the said contentions and submitted that the statements of two police constables shows that he was present at the spot of incidence,

and in view of that, application deserves to be rejected.

10. After hearing both the sides and on perusal of the entire investigation papers, it reveals that it is alleged by the prosecution that present applicant and the other co-accused were found in possession of one pistol and the live cartridges. However, admittedly, the said pistol was recovered from the co-accused Rakesh Gadekar, who was found at the spot.

11. Section 3 of the Arms Act deals with licence for acquisition and possession of firearms and ammunition which reads as no person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder. The proviso to subsection(1) says that a person may, without himself holding a licence, carry any firearm or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder. He said to have committed an offence punishable under Section 3 of the Arms Act.

12. From this section it is clear that while for firearms in

view of the provisions of section 3 of Arms Act, it is necessary to hold a valid licence normally no licence is required to possess any arms other than the firearm unless there is a Notification published in the Official Gazette by the Central Government for that purpose and made applicable to the particular area specified in the notification. If such a notification is issued for a specified area no person may acquire, possess or carry any such weapon, without necessary licence. Before a charge under section 4 r/w section 25 (1B) of the Arms Act could be framed, it was necessary for the prosecution to allege that there was such a notification issued by the Central Government made applicable to the particular area in which the accused persons were found.

13. Section 25 of the Arms Act deals with the punishment for contravention of Sections 3 and 5. Admittedly, the applicant was not found in possession of any arms and ammunition, and there is no such allegations against him.

14. As far as the offence punishable under Section 84 of the Maharashtra Prohibition Act is concerned, which deals with drinking at common drinking house. The entire recitals

of the FIR nowhere reveals that the present applicant was found drinking in common drinking house. Therefore, the application of Section 84 is also doubtful. Admittedly, Section 135 is for the contravention of Sections 37, 39 and 40 of the Maharashtra Prohibition Act is not attracted. The entire recitals of the FIR and the statements of the witnesses are silent about the same. Thus, considering the role attributed to the present applicant, which is only to the extent that he eloped from the spot when the vehicle was intercepted. Except that, no overt-act is attributed to him.

15. On considering the entire investigation papers, admittedly there is no material on record to show that either the present applicant was found in possession of any arms or ammunition or that he was found drinking in any common drinking house. Thus, the essential ingredients of the offence which are required for constitution of the offence itself is absent from the entire recitals of the FIR and the investigation papers.

16. By applying the parameters laid down in the Hon'ble Supreme Court of India in the case of ***State of Haryana & Ors.***

Vs. Bhajan Lal & Ors. reported in ***AIR 1992 SC 604***, which reproduced as under :-

- (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 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 Act concerned (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 Act concerned, 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 wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

17. In the above facts and circumstances of the case, no prima-facie case is made out against the present applicant. Therefore, the application deserves to be allowed. Accordingly, I proceed to pass the following order.

ORDER

a] The criminal Application is **allowed**.

b] The FIR in connection with Crime No. 349 of 2018, for the offence punishable under Sections 3 and 25 of the Arms Act, 1959; Section 135 of the Bombay Police Act, 1951; Section 84 of the Bombay Prohibition Act, 1998 and Sections 100(2) and 177 of the Motor Vehicles Act, 1988 and the consequent proceedings in Regular Criminal Case No. 210 of 2019, pending before the Judicial Magistrate First Class, Nagpur, are hereby quashed and set aside against the present applicant.

18. Pending application(s), if any, stands **disposed of**.

(URMILA JOSHI PHALKE, J.)