



Judgment

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

CRIMINAL APPLICATION APL NO.311 OF 2025

Umesh s/o Chandrika Prasad
Yadav, aged about 36 years,
occupation : business, r/o ward No.6,
Khandelwal Nagar, tahsil
Parseoni, Kanhan, Nagpur-
441 401.

..... **Applicant.**

:: VERSUS ::

1. The State of Maharashtra,
through Police Station Officer,
Police Station Kanhan, District
Nagpur.

2. Police Constable-Sachin
Welekar, B.No.1828, aged
about 51 years, occupation: service,
police Station Kanhan, district
Nagpur.

..... **Non-applicants.**

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Shri S.P.Sonwane, Counsel for the Applicant.
Shri A.M.Kadukar, APP for Non-applicant No.1/State.

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CORAM : URMILA JOSHI-PHALKE, J.

DATE : 27/01/2026

ORAL JUDGMENT

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1. Heard learned counsel Shri S.P.Sonwane for the applicant and learned APP Shri A.M.Kadukar for the NA No.1/State. **Admit.** Heard finally by consent of learned counsel for the parties.

2. By this application, the applicant seeks quashing of the FIR in connection with Crime No.895/2024 registered for offences under Sections 3(5) and 303(2) of the BNS 2023 and under Section 48(7) and 48(8) of the Maharashtra Land Revenue Code and under Sections 4 and 21 of the Mines and Minerals Act and under Section 3 of the Prevention of Damage to Public Property Act, 1984 and the consequent proceeding arising out of the same bearing RCC No.58/2025.

3. The crime is registered on the basis of a report lodged by the non-applicant No.2 (the informant) on allegations that on 7.12.2024, the informant, who is police officer, has received a secret information that there is illegal transportation of sand on Gadegaon to Kanhan Road by tractor and, therefore, they visited the said place and at the said place, one tractor was found in a suspicious condition bearing registration No.MH-40-A/2857. They intercepted the said tractor and on interception of the said tractor,

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the sand measuring half brass of Rs.1500/- was found in the said vehicle. During the enquiry, it revealed that the applicant is involved in the sand theft and, therefore, he is arrayed as accused. On the basis of the said report, the police have registered the crime against the applicant.

4. Learned counsel for the applicant submitted that initially NC Report was registered and without seeking any permission, in view of Section 155 of the CrPC, this FIR came to be lodged. He submitted that in fact recital of the NC Report nowhere shows any involvement of the applicant in the alleged offence. Thus, without following due process of law, the investigation was carried out and chargesheet is submitted against the applicant. In view of that, the application deserves to be allowed.

5. *Per contra*, learned APP for the State strongly opposed the said contentions and submitted that driver of the tractor was found and NC Report was registered subsequently. The involvement of the applicant is also revealed. In view of that, the application deserves to be rejected.

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6. On hearing both the sides and perusing the entire investigation papers, it shows that there is no dispute that initially NC Report was registered bearing No.681/2024 under Section 303(2) of the BNS. The allegation in the said NC Report is that on interception of the vehicle, half brass sand was found and the driver of the tractor was also found and he has not produced any Permit and, therefore, NC Report came to be lodged. It reveals from the the entire investigation that on the basis of the said NC Report, further investigation was carried out by the investigation agency and statements of various witnesses are recorded and after recording the statements, the chargesheet came to be filed.

7. Thus, it is not disputed fact that initially NC Report was filed against the driver of the tractor and subsequently, after recording the statements, that is also without seeking permission in view of Section 155 of the CrPC, chargesheet came to be filed.

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8. In view of Sections 155 of the CrPC and 174 of the BNSS, no police officer can investigate non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

9. Thus, in view of the above provision, obtaining permission from the Magistrate is mandatory on the part of the investigating agency.

10. Thus, it is apparent that without permission of the Magistrate, the investigation was carried out by the investigating agency which is illegal.

11. In view of the above, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(1) The Criminal Application is **allowed**.

(2) The FIR in connection with Crime No.895/2024 registered for offences under Sections 3(5) and 303(2) of the BNS 2023 and under Section 48(7) and 48(8) of the Maharashtra Land Revenue

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Code and under Sections 4 and 21 of the Mines and Minerals Act and under Section 3 of the Prevention of Damage to Public Property Act, 1984 and the consequent proceeding arising out of the same bearing RCC No.58/2025 are hereby quashed and set aside to the extent of the applicant.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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