



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

CRIMINAL APPLICATION (APL) NO. 1122 OF 2025

Sheikh Salim Sheikh Gafur

Aged about 45 years,

Occupation : Driver,

R/o Shastri Nagar, Ward No.4,

Arni, Tq. Arni Dist. Yavatmal

APPLICANT

// V E R S U S //

State of Maharashtra,

Through its Police Station Officer,

Police Station Umarkhed

District Yavatmal

NON-APPLICANT

Mr. S.A. Mohta, Advocate for the applicant.

Mr. H.D. Dubey, APP for non-applicant /State.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 16.01.2026

ORAL JUDGMENT :

1. Heard.

2. **ADMIT.** Taken up for final disposal with the consent of learned counsel for the parties.

3. The present application is preferred by the applicant for quashing of the First Information Report in connection with crime No.409/2020 registered with the non-applicant No.2-Police

Station Umarkhed under Sections 109, 188, 269, 272, 273 and 328 of the Indian Penal Code (for short, 'IPC'). Applicant has further prayed for quashing of charge-sheet No.228/2022 and SCC No.514/2022 pending on the file of Judicial Magistrate First Class, Umrakhed, Distt. Yavatmal.

4. As per the allegation of FIR lodged by non-applicant No.2 that there is a ban on the production and sale of pan masala and gutaka. The ban was imposed by notification of the Government of Maharashtra through the Commissioner of Food Safety by issuing notification dated 15.07.2020. Despite of said ban as per the allegation in the FIR co-accused was found in possession of contraband articles i.e. scented supari, scented tobacco worth Rs.19,140/-. During interception of co-accused, the said articles were seized from his possession and during inquiry the co-accused has stated the name of the present applicant as supplier of the said contraband articles and therefore, present applicant is arrayed as an accused.

5. Heard learned counsel for the applicant who submitted that except the statement of the co-accused, there is no

material on record to connect the present applicant in the alleged offence. More over no material is placed on record by the police officers. Merely on the basis of statement made by co-accused , present applicant is implicated in the alleged offence. No prima-facie case is made out against the applicant. Hence FIR be quashed against the present applicant alongwith the consequent proceedings. He submitted that continuation of the criminal proceeding would be an abuse of process of law. Hence prayed for quashing of the FIR.

6. Per contra, learned APP strongly opposed the same by stating that considering the applicant being the supplier of the contraband articles, prima-facie case is made out against the present applicant. In view of that application deserves to be rejected.

7. In the backdrop of the aforesaid facts, I have perused the FIR in question and consequent charge-sheet filed on record after completion of investigation. As can be seen from FIR in question, it is lodged at the behest of police and not by the Food and Safety Officer. Moreover, the applicant is involved in the alleged incident only on the basis of statement of the co-accused,

Except statement of co-accused there is no material to connect the applicant in the alleged offence. Thus, statement of co-accused is not admissible in law. In view of that, I am of the considered view that continuation of proceedings against present applicant would be an abuse of process of law. In view of the judgment and the principles laid down by the in the case of **State of Haryana and others vs. Bhajanlal and others** reported in **1992 Supp(1) Supreme Court Cases 335**, where it is stated as under:-

“ (a) 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;

(b) where the allegations in the First information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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.

In view of that the application deserves to be allowed.

8. Hence, I proceed to pass the following order:-

ORDER

(i) The Criminal Application is allowed.

(ii) The First Information Report in connection with Crime No.409/2020 registered with the non-applicant No.2-Police Station Umarkhed punishable under Sections 109, 188, 269, 272, 273 and 328 of the IPC and charge-sheet No.228/2022 and SCC No.514/2022 pending on the file of Judicial Magistrate First Class, Umrakhed, Distt. Yavatmal is quashed and set aside to the extent of applicant- Sheikh Salim Sheikh Gafur.

9. The criminal application stands disposed of in the above said terms.

Pending applications, if any, also stand disposed of.

(URMILA JOSHI PHALKE, J.)

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