



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

CRIMINAL APPLICATION (APL) NO. 994 OF 2026

Rehan Khan Yasin Khan,
Aged about 34 years, Occ. - Business,
R/o. Afwan Nagar, Dharamkata Chowk,
Amravati, Tq. And Distt. Amravati. **... APPLICANT**

...VERSUS...

1. State of Maharashtra,
Through Police Station Officer,
Babulgaon Police Station,
Babulgaon, Distt. Yavatmal.
2. Food Safety Officer,
Food and Drug Administration (M.S.)
Yavatmal. **... NON-APPLICANTS**

Mr. S. A. Mohta, Advocate for Applicant.
Mr. A. M. Kadukar, A.P.P. for Non-applicant/Respondent.

CORAM: MRS. VRUSHALI V. JOSHI, J.
JUDGMENT RESERVED ON: 30.04.2026
JUDGMENT PRONOUNCED ON: 07.05.2026

JUDGMENT: -

1. Heard.
2. **ADMIT.** The matter is taken up for final disposal by consent of the learned Counsel appearing for the parties.
3. The applicant has filed this application for quashing the Charge-sheet arising out of the First Information Report vide Crime No.571/2024 registered for the offences punishable under Sections 123,

275, 274 and 3(5) of the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as, 'BNS') read with Sections 26(1), 26(2)(iv), 27(3)(e), 30(2)(a), 3(1)(zz)(iv) and 59 of the Food Safety And Standards Act, 2006 (hereinafter referred to as, 'FSSA') and R.C.C.No.122/2024.

4. On the complaint lodged by the Food Safety Officer Smt. S. R. Surkar, the respondent has registered the offence under the above-mentioned Sections. On 26.08.2024, between 8:00 p.m., a Tata company vehicle bearing Registration No. MH-27-X-0577, travelling from Babulgaon Bus Stand toward Kalamb, was intercepted on suspicion of carrying prohibited food items. The complainant inspected the Tata vehicle. During the inspection, food items prohibited in the State of Maharashtra were found. These items are banned for storage, transport, sale, and production as per the Food Safety Commissioner's Notification dated 12.07.2024.

Thereafter, the complainant asked the driver of the vehicle about the ownership of the goods, he informed that the goods belonged to the applicant. The driver has also disclosed that the goods were loaded into the vehicle in front of "Busy Land" on Nandgaon Peth Road, and he was instructed to deliver the goods to Kalamb, District Yavatmal. Thereafter, all the articles were handed over to the complainant, and accordingly, the complainant has lodged the present report against the driver, the present applicant and the crime is registered.

5. The learned Counsel for the applicant has stated that only upon the statement of the co-accused, the crime is registered against this applicant. Except for the said statement, there is no incriminating material against this applicant. He has further stated that the present applicant is not the owner of the goods in question. It is further submitted that the alleged action on the part of the prosecuting agency is illegal. The filing of the charge-sheet against the applicant along with the crime for the offences punishable under Sections 123, 275, 274, 3(5) of the BNS along with Sections 26(1), 26(2)(iv), 27(3)(e), 30(2)(a), 3(1)(zz)(iv) and 59 of the FSSA is without jurisdiction.

In respect of the allegation of distribution and storing of “unsafe food,” it is submitted that the authorities under the Food Safety and Standards Act can only take action, as it postulates an overriding effect over all other food-related laws. It is further submitted that, in view of the specific provisions under the Food Safety and Standards Act, 2006, the offences relating to the distribution and storage of unsafe food are governed under the FSSA, 2006 and are to be dealt with as per the procedure prescribed for drawing and analysis of samples.

It is also argued that before launching any prosecution for the alleged offence, the concerned authorities must follow the mandatory requirements as provided under Sections 41 and 42 of the Food Safety and Standards Act, 2006, and therefore, the Police have no authority or

jurisdiction to investigate the matter under the said Act. Hence, it is prayed that the First Information Report registered against the applicant be set aside.

6. The learned A.P.P. has stated that the driver of the vehicle has specifically mentioned the name of the present applicant. He was found along with the contraband articles and has stated that the applicant is the owner of the said articles. Therefore, it is necessary to conduct the trial to prove the offence against the applicant. Hence, it is prayed that the application be rejected.

7. Heard the learned Counsel for the applicant and the learned A.P.P. for the State.

8. It appears from the First Information Report that the offences under the BNS have been registered along with the FSSA, which is a special enactment. If it is considered for the application of the offence punishable under Section 123 of the BNS, the ingredients of Section 123 must be fulfilled to attract the said Section. The ingredients of Section 123 of the BNS are as follows:

- a. Whoever administers to, or causes to be taken by any person, any poison or any stupefying, intoxicating, or unwholesome drug or other thing;
- b. With intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause hurt.

9. To attract the offence under Section 123 of the BNS, both the elements must operate conjunctively, and only then can the offence be said to be committed. It is required to prove that the substance in question was a poison or any stupefying, intoxicating, or unwholesome drug, etc.; that the accused administered the substance to the complainant or caused the complainant to take such substance; and that he did so with the intent to cause hurt, or knowing it to be likely that he would thereby cause hurt, or with the intention to commit or facilitate the commission of an offence. It is, therefore, essential for the prosecution to prove that the accused was directly responsible for administering the poison, etc., or causing it to be taken by any person, either directly or through another, which is not the case in hand. Therefore, the offence under Section 123 of the BNS will not be attracted.

10. To establish that an offence under Sections 274 and 275 of the BNS has been committed, the prosecution is required to prove that the article involved was food or drink meant to be consumed by human beings, that the accused adulterated such article, that the adulteration rendered it noxious as food or drink, and that the accused, at the time of such adulteration, intended to sell such article as food or drink, or knew it to be likely that such article would be sold as food or drink. Only because the driver has stated that the applicant is the owner of the

goods, which were sized, the crime is registered. There are no allegations that, accused adulterated such articles. Hence, offence under Sections 274 and 275 will not be attracted.

11. On perusal of the FIR, it appears that the offences under the BNS Act are not attracted against this applicant. The name of this applicant has been disclosed by the co-accused. Therefore, a case is made out to set aside the FIR, charge-sheet, and R.C.C. No. 122/2024 registered for the above-mentioned offences. Hence, the following order:

- i] The application is allowed.
- ii] The charge-sheet arising out of the First Information Report vide Crime No. 571/2024 registered for the offences punishable under Sections 123, 275 and 274, 3(5) of the Bharatiya Nyaya Sanhita, 2023, read with Sections 26(1), 26(2)(iv), 27(3)(e), 30(2)(a), 3(1)(zz)(iv) and 59 of the Food Safety and Standards Act, 2006 and R.C.C.No. 122/2024 pending on the file of the Judicial Magistrate First Class, Babulgaon are quashed and set aside.

(MRS. VRUSHALI V. JOSHI, J.)