

Session C. No.151/2022
State ..Vs.. Govindsingh & Others
CNR NO. MHAM040017792022

Order Below Exhibit No.13
(Dated 19.10.2024)

1. Accused Gaurav has filed present application for discharge under Section 227 of the Code of Criminal Procedure.

2. It is contention of the prosecution that on 22.12.2021, tobacco and Pan Masala were illegally being transported in truck bearing registration No. RJ 11 GC 8590. Accused Rambaran was driver of the truck whereas accused Govindsingh was cleaner of the truck. The said truck was intercepted by the police and tobacco and Pan Masala worth Rs.16,95,000/- was found on the said truck. The truck was seized. Accused Rambaran and accused Govindsingh were arrested. Investigation revealed that said tobacco and Pan Masala were dispatched by accused Gaurav. The said truck entered into territorial jurisdiction of Paratwada from Baitul. The investigation further revealed that the said tobacco and Pan Masala were ordered by accused Vikram. After investigation, charge-sheet came to be filed against all accused persons.

3 Learned advocate for accused Gaurav submitted that accused Gaurav is mere partner of Jay Road Lines, Delhi. There is no evidence that accused Gaurav booked consignment of tobacco and

Pan Masala to be transported. Moreover, there is no administration of poisonous substance by accused Gaurav. Therefore, offence against him is not made out. Charge cannot be framed merely on the basis of suspicion. Learned advocate for accused Gaurav relied on judgment of Hon'ble Apex in **Vikramjit Kakati Vs. State of Assam [DLD (Cri)-2022-1550]**. In this case, it was observed that trial judge is not a mere post office to frame the charge at the instance of the prosecution. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial court would be empowered to discharge the accused. In **Madhavrao Jiwaji Scindia and another Vs. Sambhajirao Chandrojirao Angre and others [AIR 1988 SC 709]**, Hon'ble Apex Court observed that it is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the un-controverted allegations as made prima facie establish the offence. In **Jassa Ram Vs. State of Rajasthan, Criminal Miscellaneous Bail Application No.12055 of 2024 dated 08-10-2024**, Hon'ble Rajasthan High Court has observed that mere ownership or connection to the vehicle does not conclusively imply knowledge or actual involvement in the crime. Learned advocate for accused Gaurav prayed that accused Gaurav be discharged.

4. Learned Additional Public Prosecutor submitted that tobacco and Pan Masala were being transported in the truck which is owned by Jay Road Lines. The accused is owner of the said truck and therefore, he cannot be discharged. Learned Additional Public Prosecutor prayed that the application be rejected.

5. I have perused the charge-sheet. None of the witnesses has specifically named accused Gaurav. It is contention of the prosecution that accused Gaurav has dispatched tobacco and Pan Masala to be delivered to accused Vicky. Accused Vicky has already been discharged as there was no material against him. None of the witnesses specifically stated that tobacco and Pan Masala were dispatched by accused Gaurav. It seems that he has been made accused simply because he had some connection with Jay Road Lines. The accused has placed on record document which shows that accused Gaurav is partner of Jay Road Lines. There is absolutely no evidence that contraband tobacco and Pan Masala were dispatched by accused Gaurav. It is contention of accused Gaurav that all items were to be delivered at Akola. Those Challans have been produced on record by accused Gaurav. There were electric and plastic items which were to be delivered at Akola. Interestingly, seizure form shows that there were as many as 49 electric and plastic items which were found loaded in the truck. Thus, it is not the case that only contraband articles such as tobacco and Pan Masala were being transported. Considering these circumstance, I do not find any material to suggest that contraband articles such as tobacco and Pan Masala were dispatched by accused Gaurav. Hence, there is no material to frame charge against accused Gaurav. Consequently, I pass following order.

ORDER

1. Application Exhibit No.13 is allowed.

2. Accused Gaurav Prakash Chawla, R/o Ashok Vihar, phase-3, New Delhi is discharged of offences punishable under Sections 328, 269,270,272, 273 and 188 of the Indian Penal Code and Sections 26(2), 27, 30(2)(a), 59 of the Food Safety and Standards Act in Sessions Case No. 151/2022 vide Section 227 of the Code of Criminal Procedure.

Date :-19.10.2024.

(Rohan B.Rehpade)
Additional Sessions Judge-2,
Achalpur