

MHCH010004002025



Presented on : 01.02.2025

Registered on : 01.02.2025

Decided on : 30.07.2026

Duration : 01 Y: 05 M: 29 D

Exh. No.42

FORM NO. XXXII

Part 'A'

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE AT
CHANDRAPUR.**

(Presided over by J.V. Muthal)

	Date of Judgment :- 30.07.2026 SESSIONS CASE NO. 25/2025	
	F.I.R./Crime No.286/2024 State through Police Station, Gondpipari.	
PROSECUTION		State of Maharashtra, through Police Station, Gondpipari.
PRESENTED BY		A.P. P. Shri. D.V. Mahajan.
ACCUSED	1	Purushottam Baliram Kosare, Aged about 45 yrs., Occ. Pan material,
	2.	Pankaj Baliram Kosare, Aged about 40 yrs, Occu. Pan material Both R/o. Shiwaji Ward, Gondpipari, District Chandrapur.
REPRESENTED BY		Advocate Shri. R.R.Varma for the accused.

Part – B

Date of offence	06.10.2024.
Date of FIR	07.10.2024.
Date of Chargesheet	01.02.2025.
Date of Framing of Charge	23.01.2026.
Date of commencement of evidence	16.02.2026.
Date on which judgment is reserved	30.07.2026.
Date of judgment	30.07.2026
Date of Sentencing Order, if any	---

Accused Details:

Rank of the Accused	Name of accused.	Date of Arrest	Date of Release on Bail.	Offences charged with.	Whether acquitted or convicted	Sentence Imposed.	Period of Detention Undergone during Trial for purpose of Section 468 of BNSS.
A1	Purushottam Baliram Kosare,	07.10.24	09.10.24	Section 275, 123, 223 of The B.N.S. and 26(1), 26(2)(i), 26(2)(iv), 27(3)(e) & 30(2)(a) R/w sect. 3,4 pun.u/s. 59 of Food Safety and Standards Act, 2006	Acquitted	---	---
A2	Pankaj Baliram Kosare,	Anticipatory Bail			Acquitted	---	---

:: J U D G M E N T ::

(Delivered on this 30.07.2026)

The accused is prosecuted for the offence punishable U/s.275, 123, 223 of the Bhartiya Nyaya Sanhita, 2023 and 26(1), 26(2)(i), 26(2)(iv), 27(3)(e) and 30(2)(a) r/w Section 3, 4 of the Food Safety & Standard (Prohibition & Restriction on Sale) Regulation, 2011, which is punishable under Section 59 of Food Safety and Standards Act, 2006.

02. The case of the prosecution in brief is as follows:

The informant, Santosh Dyaneshwar Nimborkar was working as PSI, LCB, Chandrapur. On 06.10.2024, he got secret information that, the accused Purushottam Baliram Kosare resident of Shivaji Ward, Prabhag No.6, Gondpipari had stored the scented tobacco for sale. Therefore, a raid was conducted on 06.10.2024 by informant and his team of Local Crime Branch, Chandrapur. In the raid accused Purushottam Baliram Kosare was found illegally storing and intending to sell prohibited food articles. He told that stock of scented tobacco stored in the courtyard in the house of his relative Mahadeo Pandurang Themake. There they found Eagle Hookka Shisha tobacco, 320 packets, each packet of 200 grams worth Rs.99,200/- and also 670 packets of 40 grams total of Rs.42,880 and 200 packets of 200 grams total of Rs.32,800/- , total value of Rs.1,74,880/-. Total value of all the aforesaid the prohibited food articles was Rs.1,74,880/-. The aforesaid food articles were prohibited under the notification issued by the

Government of Maharashtra in the interest of public health and were alleged to be adulterated and injurious to health.

03. Accordingly, the said prohibited food articles were seized and thereafter Crime No.286/2024 came to be registered against the accused on the report of PSI Santosh Dyaneshwar Nimbhorkar, PSI, Local Crime Branch, Chandrapur. Police Sub-Inspector Ramesh Shahaji Hattigote (PW-3) carried out the investigation, spot and seizure panchanama was drawn out by PW-4/Informant. Statements of witnesses were recorded by PW-3/Investigating Officer.

04. Upon completion of investigation, charge-sheet was filed against the accused in the Court of Judicial Magistrate First Class at Gondpipari, who committed the matter to the Court of Sessions under Section 232 after complying the Section 230 of B.N.S.S.

05. This court framed charge (Exh.14) against the accused for the offences punishable under Sections 275, 123, 223 of the Bhartiya Nyaya Sanhita, 2023 and 26(1), 26(2)(i), 26(2)(iv), 27(3)(e) and 30(2)(a) r/w Section 3, 4 of Food Safety and Standards (Prohibition & Restriction on Sale) Regulation, 2011 which is punishable under section 59 of the Food Safety and Standards Act, 2006. The charge was read over and explained to the accused in vernacular. Both accused pleaded not guilty and claimed to be tried.

06. In support of its case prosecution has examined in all 04 witnesses, as mentioned in the Part C of the judgment and relied upon the documents referred to in Part C of the judgment. The Learned Additional Public Prosecutor closed the prosecution evidence by filing pursis Exh.39.

07. The statements of accused were recorded under section 351 of BNSS, 2023 (Exh.40 & 41). The defence of the accused is that of total denial and with a plea of false implication. Accused did not lead and evidence.

08. I have gone through the case of prosecution and evidence adduced in support of the same and heard arguments of both sides.

09. Learned Additional Public Prosecutor Shri. D.V. Mahajan has argued that, police can investigate and launch simultaneously prosecution under the B.N.S. and Food Safety and Standards Act, 2006. The testimonies of prosecution witnesses cannot be discarded. He submitted that, prosecution has established its case beyond reasonable doubt and prayed for conviction of the accused.

10. Learned Advocate Shri. R.R.Varma argued that, launch of prosecution under different Sections of B.N.S. is not tenable under the law, facts and circumstances of the case. He submitted that, it is not justified to invoke the provisions of Food Safety and Standards Act considering the fact that, the possession of alleged

prohibited food products is not proved beyond reasonable doubt by the prosecution.

11. Ld.Advocate for the accused further argued that, provisions of Section 47 of the said Act have not been followed scrupulously. There is absolutely no evidence on record to show that, there was any complaint made for causing harm due to prohibited gutka or scented tobacco or pan material to anyone. He argued that, the evidence brought on record by the prosecution is not sufficient for holding the accused guilty. Hence, he prayed for acquittal of the accused.

12. Thereupon following points arise for my determination and I have recorded my decisions thereon as under for the reasons to follow:

Sr.No.	<u>Points</u>	<u>Decisions</u>
1.	Does the prosecution prove that on 06.10.2024, in between 19:30 hours to 20:45 hours, at mouza Khaire Kunbi Ward, Gondpipri, Tah. Gondpipari, District Chandrapur, accused No.1 and 2, in furtherance of their common intention, were found in possession of scented tobacco worth Rs.1,74,880/- which had become noxious as food, knowing or having reason to believe that the same is noxious as food and that you have thereby committed an offence punishable under Section 275 r/w 3(5) of Bharatiya Nyaya Sanhita, 2023 ?	...Not proved

2.	Does the prosecution prove that on the above mentioned date, time and place, accused No.1 and 2 in furtherance of their common intention caused to be taken the banned articles like scented tobacco by any person with intent to cause hurt to the said person or knowing it to be likely to cause hurt thereby to the said person and that you have thereby committed an offence punishable under Section 123 r/w section 3(5) of Bharatiya Nyaya Sankhita, 2023 ?	...Not proved
3.	Does the prosecution prove that on the above mentioned date, time and place, accused No.1 & 2 in furtherance of your common intention, knowing that prohibitory order was promulgated by a public servant lawfully empowered to promulgate the said order where under you were directed to abstain from possessing, carrying or selling prohibitory or banned articles, in spite of that, you were found in possession of scented tobacco on the above mentioned place, which is dangerous for health and is obeyed such direction the disobedience of which caused to public health and that you have thereby committed an offence 223 r/w 3(5) of Bharatiya Nyaya Sanhita, 2023 ?	...Not Proved
4.	Does the prosecution prove that on the above mentioned date, time and place, accused No.1 and 2 were found in possession of banned articles i.e. scented	

	tobacco worth Rs.1,74,880/- which were found on the above mentioned place, without any permit or licence, and did not follow or obey the prohibitory order passed by the Public Servant under the control of Food Authority and which is for the time being prohibited by the Food Authority or the State Government in the interest of public health and unidentifiable of the manufacturer or the distributors from whom such articles of food were received by you with knowledge of being unsafe; unsafe food-means and article of food whose nature, substance or quality is so affected as to render it injurious to health by addition of a substance directly or as an ingredient which is not permitted the Commissioner of Food prohibited in the interest of public health, the manufacture, storage, distribution or sale of any article of food and thereby committed an offence defined under section 26(1), 26(2)(i), 26(2)(iv), 27(3)(e), 30(2)(a) of the Food Safety and Standards Act, 2006 read with Section 3, 4 of Food Safety & Standard (Prohibition & Restriction on sale) Regulation, 2011, which is punishable under section 59 of The Food Safety and Standards Act, 2006 ?	...Not Proved
5.	What order?	...As per final order.

REASONS**As to point Nos.1 to 4 :-**

13. In order to prove offence under Section 275 of B.N.S., the prosecution has to prove that, the accused were found selling or offering for sale any adulterated noxious food or drink. In the present case, the prosecution has not adduced evidence to show that the accused have adulterated scented tobacco by making it noxious as food or drink. Moreover, the prosecution has not led any evidence to show that, the accused were found selling or offering for sale any scented tobacco products to the customers.

14. The PW-1 Panch Suraj Prabhudas Kulsange (Exh.20) & PW-2 Dharmaram Fakira Mallode (Exh.22) both have not supported the prosecution case. In the cross-examination by Ld.APP both the witnesses denied any seizure in their presence. Both the witnesses have not deposed that any samples for the purpose of analysis were drawn in their presence by police from the seized, prohibited scented tobacco. The prosecution also has not proved that, the seized material was injurious to health by leading cogent and convincing evidence. Though the prosecution has filed C.A. report (Exh.30) on record. Since the foundational facts of the seizure has not been proved by the prosecution by reliable evidence. The analysis report of the Food Articles Exh.30 cannot be relied. In the said report Exh.30 it has mentioned that the three samples contravene the Government order dt. 12.07.2024. There is no

mention of any other thing ascertaining the injurious nature of the food articles.

15. Thus, the prosecution has not proved beyond reasonable doubt that the accused was actually found in possession of the contraband i.e. scented tobacco. Both the panch witnesses PW1 & PW2 have not given details of different kinds of scented tobacco allegedly seized by police. So also, PW-3 who is the investigating officer and PW4 Santosh Nimbhorkar have not stated anything about the procedure adopted for drawing the sample as per the Food Safety and Standard Act. Thus, the very foundational facts of seizure has not been proved by the reliable evidence by the prosecution. There is no evidence on record that the accused were found in possession the prohibited scented tobacco articles selling to customers or they were administering the same to any other persons. There is no reliable prosecution evidence to prove the ingredients of Section 275 of B.N.S. Therefore, in my considered view, the prosecution has failed to prove the essential ingredients of Section 275 of B.N.S.

16. **Section 123 of Bhartiya Nyaya Sanhita, 2023 reads as under :-**

Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating, or unwholesome drug or other thing 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, shall be

punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

17. Thus to prove offence under Section 123 of B.N.S., prosecution has to prove that the accused administered or caused to be taken by any person any poison or stupefying substance, intoxicating or unwholesome drug.

18. In the case of *Joseph Kurien vs. State of Kerala*, reported in AIR 1995, Supreme Court 4,

Hon'ble Supreme Court has held that,

“In order to prove offence under Section 328 the prosecution is required to prove that the substance in question was a poison, or a stupefying, intoxicating, or unwholesome drug etc., that the accuser administered the substance to the complainant or caused the complainant to take such substance, that he did so with 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 poison etc. or causing it to be taken by any person through another. In other words, the accused may accomplish the act by himself or by means of another.

In either situation direct, reliable, and cogent evidence is necessary”.

19. In the present case, the prosecution has not produced any evidence to prove that, the accused administered or caused to be taken by any person directly or indirectly any poison or stupefying substance, intoxicating or unwholesome drug, as per the case of the prosecution and evidence and witnesses. The accused was found in possession of scented tobacco of different brands and names. The prosecution has not produced any evidence to show that the accused was found selling or administering any good or scented tobacco to the customers. Mere possession of scented tobacco packets does not amount to administration or causing to be taken any poison or stupefying substance, intoxicating or unwholesome drug to any person with intent to cause hurt within the meaning of Section 123 of B.N.S., 2023.

20. Therefore in my considered view, prosecution has failed to prove essential ingredients of offence punishable under Section 123 of B.N.S.,2023 beyond reasonable doubt.

21. As per the prosecution accused has disobeyed the prohibition order promulgated by a public servant and thereby committed an offence punishable under Section 223 of B.N.S. However, prosecution witnesses during their evidence have not clearly deposed that accused has disobeyed the prohibition order issued by the public servant.

22. Section 215 of the B.N.S.S. provides that no court shall take cognizance of an offence under Section 206 to 223 of Bhartiya Nyaya Sanhita, 2023 except upon a complaint in writing of the public servant concerned, or of some other public servant to whom he is administratively subordinate. As per the case of prosecution, accused has committed breach of prohibition order issued or promulgated by Commissioner of Food Safety.

23. In the case in hand, there is no written complaint made by the Commissioner of Food Safety or his sub-ordinate. On the contrary, it is founded upon the first information report by a Police Officer, and the final report is also submitted by an Investigation Officer vide Section 193 of B.N.S.S., 2023. Thus, in view of the legal bar under section 215 of B.N.S.S. the accused cannot be held guilty for offence punishable under Section 223 of B.N.S., 2023.

24. Allegation against the accused is that they have committed offence punishable under Section 59 of the Food Safety and Standards Act, 2006 by committing breach of Sections 26(2) (i), 26(2)(iv), 27(2)(e) and 30(2)(a) r/w Section 59 of the said Act. In order to prove offence punishable under Section 59 of said Act, the prosecution has to prove that the accused manufactured for sale or stored or sold, distributed or imported any articles of food for human consumption. The prosecution has to further prove that the procedure prescribed under the said Act has been complied with.

25. PW-4 informant Santosh Dyaneshwar Nimbhorkar (Exh.34) has not given any information to Food and Drug Administration before the raid. Considering all these facts, and in absence of reliable evidence of independent panch on spot cum seizure panchanama. The very possession of the accused persons of the aforesaid prohibited scented tobacco becomes doubtful. PW-4 Santosh Dyaneshwar Nimbhorkar (Exh.34) had not given any information about the seized food articles to the Food and Drugs Administration. However, in case of seizure of prohibited food it is mandatory to follow the procedure as laid down under the Food Safety and Standards Act, 2006. Thus, it is useful to peruse the relevant provisions of Food Safety and Standards Act, 2006.

Section 42 of the Food Safety and Standards Act, 2006 reads as follows:

Section 42: Procedure for launching prosecution :-

- (1) The Food Safety Officer shall be responsible for inspection of food business. Drawing samples and sending them to a food analyst for analysis.
- (2) The food analyst, after receiving the sample from the food safety officer, shall analyse the sample and send the analysis report, mentioning the method of sampling and analysis, within 14 days to the Designated Officer, with a copy to the Commissioner of Food Safety.
- (3) The Designated Officer, after scrutiny of the report of food analyst, shall decide as to whether the contravention is punishable with imprisonment or fine only. In the case of a contravention punishable with imprisonment, he shall send his recommendations

within 14 days to the Commissioner of Food Safety for sanctioning prosecution.

- (4) The Commissioner of Food Safety shall decide within the period prescribed by the Central Government as per the gravity of the offence whether the matter be referred to.
 - (a) court of ordinary jurisdiction in case of offences punishable with imprisonment for a term of three years or (b) a Special Court in case of offences punishable with imprisonment for a term exceeding three years, where such a Special Court is established; and in case no Special Court is established, such cases shall be tried by a Court of ordinary jurisdiction.
- (5) The Commissioner of Food Safety shall communicate his decision to the Designated Officer and the concerned Food Safety Officer, who shall launch prosecution before the court of ordinary jurisdiction or Special Court, as the case may be and such communication shall be sent to the purchaser if the sample was taken under Section 40.

26. In the case in hand the accused have been prosecuted on the basis of the charge-sheet filed by the police, under Section 193 of B.N.S.S., 2023. The prosecution has not been launched by a Designated Officer or Food Safety Officer as required under Section 42 of the Food Safety and Standards Act, 2026.

27. The procedure prescribed under Section 42 of Food Safety and Standards Act. 2006 is mandatory. It has been held by the Hon'ble Bombay High Court in '*Ranjitsingh H.N. Nimbalkar Vrs. State of Maharashtra*, reported in 2024 SCC OnLine Bom. 766.

“Upon collection of sample the FSO is required to send a sample for analysis to the Food Analyst. Sub section of section 42 prescribes the time limit for analysis of the sample received from FSO and for sending the report. The food analyst, sub section of section 42, mandates that he shall analyse the sample and send the analysis report. Mentioning the method of sampling and analysis within 14 days to the Designated Officer. Sub section 3 of Section 42 enjoins the Designated Officer to decide, after scrutiny of the report of the Food Analyst, as to whether the contravention is punishable with imprisonment or fine only. And in case the contravention is punishable with imprisonment, send his recommendations within 14 days to the Commissioner of Food Safety for sanctioning prosecution. Sub section 4 of Section 42 further enjoins the Commissioner of Food Safety to decide within the period prescribed by the Central Government whether to refer the matter to the court of ordinary jurisdiction or Special Court.

The provisions contained in Section 77 also deserve to be immediately noticed. It precludes the court from taking cognizance of an offence under the Act, 2006, after the expiry of a period of one year from the date of commission of an offence. The proviso empowers the commissioner of Food Safety, for reasons to be recorded in writing, to approve prosecution within an extended period up to three years.

*Cumulatively, it becomes abundantly clear that the Parliament has considered it necessary to prescribe the time limit for taking actions by the competent authorities under the Act, 2006. In sub-sections 2, 3, and 4 of section 42 as well as section 77, the Parliament has used the word “**shall**” , which ordinarily gives a mandatory character to the provision”.*

28. In the present case, prosecution has not brought any evidence on record to show that the mandatory procedure prescribed under Section 42 of the Food Safety and Standards Act, 2006 has been followed. Prosecution has not proved that, the procedure prescribed under the said Act was followed for drawing the samples from the seized articles for conducting C.A. tests. P.W.-4 Santosh Dyaneshwar Nimbhorkar (Exh.34) has not deposed as to what procedure was followed by him for drawing the samples from the seized contraband. P.W.-1 panch Suraj and P.W.2 Dharmaraj have not deposed anything about drawing of samples from the seized material. Though the C.A. report has been filed on record it cannot be considered, as the seizure panchanama has not been proved by the prosecution by reliable evidence. The prosecution has not proved on record the Government Notification banning the sale and possession of prohibited scented tobacco products. Thus, the prosecution has failed to prove beyond reasonable doubt that prohibited scented tobacco material was actually seized from the possession of the accused. The evidence of prosecution to that effect seems to be doubtful. Therefore, the case of prosecution in respect of an offence punishable under Section 59 of the Food Safety and Standards Act, 2006, appears to be doubtful. Therefore, accused is entitled for benefit of doubt. Prosecution has not proved its case beyond reasonable doubt. **Thus, I answer point no.1 to 4 in negative.**

As to point No.5 :

29. In view of aforesaid reasoning and my decisions as to point Nos.1 to 4, I proceed to pass the following order.

:: ORDER ::

1. Accused Purushottam Baliram Kosare and Pankaj Baliram Kosare are acquitted of offences punishable under Sections 275, 123, 223 of the Bhartiya Nyaya Sanhita, 2023 and 26(1), 26(2)(i), 26(2)(iv), 27(3)(e) and 30(2)(a) r/w Section 3, 4 of the Food Safety & Standard (Prohibition & Restriction on Sale) Regulation, 2011, which is punishable under Section 59 of Food Safety and Standards Act, 2006.
2. Bail bonds of accused stands canceled.
3. Seized muddemal being prohibited articles i.e. scented tobacco/gutka be disposed of, after the expiry of appeal period, if not already disposed of earlier, in accordance with law.
4. Accused shall furnish P.R. and S.B. of Rs.25,000/- each for their appearance in appellate court in compliance of Section 481 of B.N.S.S., 2023.

Dictated and pronounced in open Court.

Sd/-

(J. V. Muthal)

Additional Sessions Judge,
Chandrapur.

Date: 30.07.2026.

Part 'C' (Para 44(iii) of Chapter VI of Criminal Manual)

Rank	Name	Nature of Evidence
P.W.1	Suraj Prabhudas Kulsange (Exh.20)	Panch Witness
P.W.2	Dharmaram Fakira Mallode, (Exh.22)	Panch witness
P.W.3	Ramesh Shadaji Hattigote (Exh.26)	Investigating Officer.
P.W.4	Santosh Dyneshwar Nimbhorkar (Exh.34)	Investigating Officer/informant

B. Defence witness, if any :

Rank	Name	Nature of Evidence
Nil	Nil	Nil

C. Court witness, if any :

Rank	Name	Nature of Evidence
Nil	Nil	Nil

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS:**A. Prosecution:**

Sr. No.	Exhibit Number	Description
1.	Exhibit No.21/PW.1	Seizure Panchanama
2.	Exhibit No.23/PW.2	Seizure Panchanama
3.	Exhibit Nos.27, 28, 29, 30/PW.-3	Arrest panchanama, letter to C.A. and report received from C.A.
4.	Exhibit Nos.35,36, 37, 38/PW.-4	Notice, spot-panchanama, Report and FIR

B. Defence:

Sr. No.	Exhibit Number	Description
1.	Nil.	Nil.

C. Court Exhibits:

Sr.No.	Exhibit Number	Description
1.	Exhibit Nos.40 & 41	Statements under Section 278 of B.N.S.S.(Sec.313 Cr.PC)

D. Material Objects:

Sr.No.	Material Object Number	Description
1.	Nil	Nil