

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL MISC.APPLICATION NO. 16520 of 2013**

**With**

**R/CRIMINAL MISC.APPLICATION NO. 13119 of 2013**

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**NARAYANSINH RAGHUVIRSINH CHUNDAWAT**

**Versus**

**STATE OF GUJARAT & 2 other(s)**

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**Appearance:**

**MR KUMAR H TRIVEDI ADV for the Applicant(s) No. 1**

**MR LB DABHI, APP for the Respondent(s) No. 1**

**RULE SERVED for the Respondent(s) No. 2,3**

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**CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

**Date : 30/06/2023**

**ORAL ORDER**

1. By this applications, under Section 482 of the code of Criminal Procedure, 1973 the applicant seeks to invoke the inherent powers of this Court, praying for quashing of the First Information Reports being, C.R. No.III-177 of 2013 and C.R. No.III-145 of 2013m registered with Kalol Police Station, Panchmahal for the offence punishable under Sections 66(1)B, 65(A)(E), 116(b), 81 and 83 of the Bombay Prohibition Act, 1949.

2. Heard Mr.K.H. Trivedi, learned advocate for the

applicants, L.B. Dabhi, learned APP for the respondent-State.

3. Learned advocate for the applicants submits that the case of the present applicants is that respondent No.2 had filed a complaint at Kalol Police Station in connection with offence took place on 25<sup>th</sup> August, 2013 under Sections 66(1)B, 65(A)(E), 116(b), 81 and 83 of the Bombay Prohibition Act, 1949 against the four persons mentioned in the FIR that a huge quantity of IMFL has entered into the limits of Panchmahal District from Rajasthan. It is further submitted that the said stock was sent by the applicants through its associates by one truck bearing Registration No.HR46-C-3395 and was going to passed through Kalol-Halol. In the meantime, a truck arrived and was chased by the police, but the truck driver and cleaner fled away leaving the truck near Delight Hotel. On checking inside the truck, the police found that the said truck was loaded with boxes of IMFL of different brands and quality valuing Rs.18,69.600/-. It is further submitted that against the four

persons including the present applicant, no material was found to link the applicants to the offense except the statement of the co-accused, and therefore, the present applicants have been falsely implicated in the offence. It is further submitted that the respondent authority has tried to overlook the process of law and grossly misused the provisions of law and accordingly the offense has been registered by relying on the statement of the co-accused.

4. He further submits that the applicants had nothing to do with the Muddmal or the truck or the persons, who carrying the material. He submits that the applicants are having business treating and supplying of the Marble and Stones in the area of Udaipur and the applicant are not involved in any illegal activities, and therefore, he has requested to quash and set aside the proceedings against the present applicant.

5. Learned APP has opposed the grant of present application and he has submitted that whatever investigation is to be conducted and whatever material is to

be collected has not yet come on record as this Court has earlier passed an order that no coercive steps shall be taken against the present applicants. He further submits that the name of the applicants are mentioned in the FIR and prima facie their involvement is established. He has relied in the case of **Kailash Govindram Rathi v. The State Of Gujarat**, reported in **2008 (1) GLR 257** and requested to dismiss the application.

6. Considering the submissions made by learned advocates for the respective parties, the main contention of application is based on the statement of the co-accused and present applicant have arraigned in the offence. Investigating is still at preliminary stage and Investigating Agency has not collected any material. The names of the applicants are mentioned in the FIR and the allegations leveled against the accused are yet to be investigated and even the statement of the co-accused is only against the present applicants. As regards the fact that there is no material available against the present applicant, it is very

difficult to accept the said arguments of learned advocate for the applicants at this initial stage of investigation, due to the statement of the co-accused, the investigating agency has got a clue as to how and against whom to investigate the matter, and therefore, the investigating agency has to collect evidence against the persons whose names have been disclosed by the co-accused. Even in the case of **Mohmed Salim Abdul Rasid Shaikh v. State of Gujarat**, reported in 2001(2) GLR 1580, this Court has observed in para 12 as under:

*“12..... It is pertinent to note that the prosecution case rests mainly on circumstantial evidence and police has received a clue against the present applicant from the statement of co-accused, already arrested. Irrespective of the fact that statement of co-accused to police is not admissible in evidence before the Court, but police can certainly consider that statement as a clue while interrogating him further or other persons arrested or interrogated during the course of investigation.....”*

7. In the case of **Kailash Govindram Rathi and Ors. v. State of Gujarat and Anr.**, reported in (2008)1 GLR 750, this

Court has held that complaint cannot be quashed or investigation cannot be stalled at initial stage on ground that there is no other evidence except statement of co-accused which is not admissible in evidence. Further, the Court observing that in cases where charge-sheet is filed accused shall be at liberty to move application for discharge and same shall be considered in accordance with law and on merits.

8. In view of the above, this is not a fit case for invoking powers under section 482 of the Code of Criminal Procedure in favor of the applicants as the investigation is at preliminary stage and criminal proceedings should not be confined at preliminary stage and investigation is required to be conducted. If, the charge-sheet has been filed against the accused and if there is no material against him in the charge-sheet papers, then no prejudice will be caused to the accused persons. Even if the the chargesheet is filed on the basis of evidence or the material collected and submitted along with charge-sheet, then the applicants shall have a

liberty to file a appropriate proceedings before the concerned Court, on this count also, there is no cause prejudice to the applicants. Therefore, this Court is not inclined to exercise discretionary power under Section 482 of the Code of Criminal Procedure and the Court is also not inclined to entertain the present applications. Accordingly, the applications are disposed of. Rule discharged. Interim relief stands vacated.

**(HASMUKH D. SUTHAR,J)**

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