

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 15th OF MAY, 2024
MISC. CRIMINAL CASE No. 11558 of 2024**

BETWEEN:-

**JAY KUMAR SABNANI S/O SHRI RAM KARAN
SABNANI, AGED ABOUT 30 YEARS,
OCCUPATION: BUSINESS R/O SUNSHINE
HOTEL NEW SBJI MANDI BAIRAGARH
DISTRICT BHOPAL (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI ANKIT SAXENA - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH SECRETARY DEPARTMENT
OF HOME VALLABH BHAWN BHOPAL
(MADHYA PRADESH)**
- 2. UMA SHANKAR MISHRA S/O NOT
MENTION OCCUPATION:
INVESTIGATION OFFICER POLICE
STATION BAIRAGARH, DISTRICT
BHOPAL (MADHYA PRADESH)**
- 3. STATION HOUSE OFFICER POLICE
STATION BAIRAGARH DISTRICT
BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

(BY SMT. SWATI ASEEM GEORGE – DEPUTY GOVERNMENT ADVOCATE)

.....
*This application coming on for admission this day, the court passed
the following:*

ORDER

This application under Section 482 of Cr.P.C. has been filed
seeking following reliefs:

- “A. That this Hon’ble Court may kindly be pleased to issue a writ in the nature of certiorari quashing the FIR DATED 03-09-2023 (Annexure P-3) and all criminal proceeding arising out of Crime No.332/2023 registered by respondent no.1 pending before the Chief Judicial Magistrate Bhopal (M.P.) in Case No.SUM/13439/2023.
- B. Any other relief or orders which this Hon’ble Court deemed fit and proper under the facts and circumstances in the interest of justice.”

2. It is submitted by counsel for applicant that in a Writ Petition filed by an Association against the closure of Hookah Bar, an affidavit/undertaking was given by the respondent authority/Collector that no action shall be taken against the Restaurant and Lodge, wherein Hookah is found and Tobacco is being used in it. Therefore, in the light of affidavit, blanket protection order was issued in favour of Association and applicant is also the member of Association. Thus, it is clear that no FIR can be lodged against applicant for serving Hookah and Tobacco in the hotel. It is submitted by counsel for applicant that on 03.09.2023, an FIR was lodged that an information was received that in Sunshine Hotel, Hookah with flavoured Tobacco is being served. As soon as the Police party raided the premises, customers who were consuming Hookah ran away and one person was found on the counter, who disclosed his name as Jay Kumar Sabnani and also disclosed that he is the owner of the hotel. On the search of hotel, 5 Hookahs, 5 Pipes and 5 Chimneys were seized in which the flavour was burning. The owner of the hotel was aware of the fact that his activity is dangerous to life and there is every possibility of spreading a disease. The search was carried out at 1.30 in the night and accordingly, the applicant was directed to show licence to

run the Hookah Bar but he fairly admitted that he does not have any such licence. The statements of witnesses were also recorded. **It is submitted by counsel for applicant that in fact 8 Hookahs, 8 Pipes and 8 Chimneys were seized and since the negotiations could not succeed, therefore the Police had shown the seizure of 5 Hookahs, 5 Pipes and 5 Chimneys.**

3. Be that whatever it may be.
4. The counsel for applicant was directed to point out as to whether applicant has any licence to run the Hookah Bar or not?
5. It was fairly conceded by counsel for applicant that neither the licence was produced at the time of search nor it has been filed alongwith this application.
6. Thus, it is clear that applicant was running a Hookah Bar in his hotel without any authority and thus, he is not covered by the undertaking given by the Collector/District Magistrate, Bhopal in W.P. No.19576/2023.
7. It is submitted by counsel for applicant that so far as the offence under Section 270 of IPC is concerned, there has to be some finding that the act of accused is likely to spread some disease, which may be dangerous to life. There is nothing on record to suggest that there was any possibility of spreading infection of disease which may be dangerous to life.
8. Considered the submissions made by counsel for applicant.
9. From the statements of the witnesses, it is clear that when they entered inside the hotel, they found that there was suffocation to a large extent and the foul smell of Tobacco was coming.

10. Chewing Tobacco is dangerous to life and may cause Cancer or Ulcer in mouth or in other parts of the body. Consumption of Tobacco is not the only source of infection of disease but even inhaling the smoke filled with Tobacco may also adversely affect the innocent persons. When the hotel was checked, the atmosphere was suffocated with the foul smell of Tobacco and thus, *prima facie* there is sufficient material to show that the act of applicant was likely to spread infection of the disease, which is dangerous to life and therefore, *prima facie* offence under Section 270 of IPC is made out.

11. So far as the offence under Sections 6 and 7 of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 is concerned, in view of the fact that even applicant has accepted that Hookahs were seized from the hotel of applicant, this Court is of considered opinion that *prima facie* an offence under Sections 6 and 7 of the Act 2003 would be made out.

12. Considering the totality of the facts and circumstances of the case, no case is made out warranting interference.

13. Application fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

SR*