

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**BAIL APPLICATION NO.2688 OF 2021**

Abhayjeet Vivekanand Shukla .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Pankaj D. Kavale for the Applicant.

Mr.S.V.Gavand, A.P.P. for the State/Respondent.

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**CORAM: BHARATI DANGRE, J.**

**DATED : 27<sup>th</sup> JULY, 2022**

**P.C:-**

1. The applicant is charge-sheeted for the offences punishable under Sections 392, 342, 323, 170, 504, 506 of the I.P.C. The C.R., invoking the aforesaid offences registered with Talasari Police Station, arraign four persons as accused.

2. The complaint came to be lodged with the concerned Police Station on 04/11/2018, by one Omprakash Nanhe Pal, working as driver and presently residing in Surat. He claim to be a owner of a truck, which is being driven by him.

He reported that on 31/10/2018, he received a phone call from one Haji, resident of Surat, about transporting the goods i.e. pan masala and gutka, which were to be collected from Kadodara to Bhiwandi. The goods were loaded in his truck and at about 5.45 p.m., he proceeded towards Bhiwandi on Ahmedabad Road. Around 9.00 p.m., when he crossed Gujrat border and was at the Maharashtra RTO Check-Post, a Swift car intercepted him and there were four persons in the said car. The three persons got down from the car and he was asked, as to what he was carrying in the truck. They projected themselves to be the police officers and asked him to get down from the truck and he was made to sit in the car . One of the four persons, took the steering of the truck and the car was stopped, after crossing the RTO Check-Post. He noticed the number plate of the car and according to the complainant, the truck with the goods loaded therein, was taken at some unknown place by the accused persons. His mobile phone and cash amount in his pocket were forcibly removed and he was dropped on the highway.

He approached the RTO Check-Post and informed one Baba Seth about the incident. He also reported the incident to Talasari Police Station. According to him, he went to the police

station, but the report was not lodged on the pretext that his mental condition was not good.

3. On 04/11/2018, report came to be lodged wherein he gave the description of the goods in his truck and it's worth being Rs.5,00,000/-. He also gave the number of the truck. The truck was recovered on 04/11/2018, however, the goods in it were missing.

4. The applicant came to be arrested on the same date. He alongwith one co-accused was subjected to test identification parade and the complainant has identified them.

5. The learned counsel for the applicant would assertively submit that delay in lodging of the F.I.R. as the incident dated 31/10/2018 being reported on 04/11/2018, speaks for itself. The counsel would also submit that though in the F.I.R. the goods robbed are mentioned as worth Rs.5,00,000/-, what the police have recovered in terms of the panchanama drawn at the instance of the present applicant is worth Rs.30,00,000/-. According to the learned counsel, delay in lodging the F.I.R. and the fact that there is no investigation about the destination of the prohibited substance from the person, who had booked the truck of the complainant, makes the prosecution case vulnerable. He would submit that all the

three accused persons are released on bail, but the applicant is kept incarcerated on the ground that recovery of the goods is at his instance.

6. Learned A.P.P. Mr.Gavand has relied upon two statements of the witnesses recorded under Section 164 of Cr.P.C.. One of the statements is of one Jitendra Mali, who states that he received a phone call from one Vishal Tiwari, who informed him that he was having tambakhu, pan masala and gutka and on his instructions, one person contacted him and the applicant has been named as the said person, who delivered the goods to him. As per the said witness, the applicant has delivered him 14 boxes.

Another statement is of one Paliram Saini, recorded under Section 164 of Cr.P.C., and it reveals that the said witness permitted the applicant to unload the goods on account of fault in his truck and he was informed that the goods are some gift items. The goods were unloaded by him in the open space of the company in which the witness was working on 31/10/2018 and on 04/11/2018, the police raided the premises and the goods were seized.

7. The discrepancy in the amount of the goods that are mentioned in the F.I.R. and the recovery at the instance of the

applicant, is glaring. Further, if some goods were delivered to Mr.Mali, which was packed into 14 boxes, it was imperative on part of the prosecution to ascertain how much goods have been transported in the truck. Further, the Investigating Officer subjecting only two of the accused for test identification parade, despite the fact that all the four accused persons were available, also create a loophole in the case of the prosecution. The prosecution also attempted to foist MCOCA in the subject C.R., but was unsuccessful as the learned Special Judge refused to sustain the charge under the MCOCA.

8. The applicant is incarcerated since 2018 and it is informed that till date, even the charge is not framed. Investigation is complete and the charge-sheet is filed.

In such circumstances, the applicant deserves his release on bail. In the end, he may be benefited for the lapses in the case of the prosecution when he faces the trial. However, at present, his long incarceration is unnecessary.

It is made clear that the observations made in this order are, *prima facie*, in nature and limited for the disposal of the present application.

Hence, the following order.

**: ORDER :**

- (a) Application is allowed.
- (b) Applicant – Abhayjeet Vivekanand Shukla shall be released on bail in connection with C.R.No.I-194 of 2018 registered with Talasari Police Station, on furnishing cash bail for a period of four weeks. He shall furnish P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount, within a period of four weeks.
- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.
- (d) The Applicant shall mark his attendance before Talasari Police Station on first Monday of every month till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.

**( SMT. BHARATI DANGRE, J.)**