

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. ANTICIPATORY BAIL APPLICATION NO. 3062 OF 2021

Shivkumar Shankar Rathod & Anr.	..Applicants
Vs.	
The State of Maharashtra	..Respondent

Mr. M. S. Mulla, for the Applicant.
Mr. R. M. Pethe, APP for the Respondent / State.

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**CORAM : C.V. BHADANG, J.
DATE : 8 FEBRUARY 2022
(Through Video Conferencing)**

P.C.

. By this Application, the Applicants - Accused are seeking anticipatory bail, in connection with the investigation of Crime No.468/2021 of Police Station Akkalkot South, District Solapur, under Section 420 and 468 r/w. Section 34 of Indian Penal Code (IPC) and Section 3 and 7 of the Essential Commodities Act, 1955.

2. The prosecution case, as disclosed from the complaint dated 28 July 2021 lodged by HC Ajay Bhosle is that, on 26 July 2021, while patrolling, a secret information was received that a Layland Truck No.KA-22-B-0367 carrying Rice for distribution in Fair Price Shop, filled in different Gunny bags, would be crossing Dudhani

Checkpoint. Accordingly, the said truck was intercepted which was found loaded with 200 gunny bags containing Rice. The Applicant No.2 Rahul Jadhav was the driver on the truck who could not explain the source of the rice and had no documents. He informed that the rice is being carried from Kevambi, Taluka Surpur, District Yadgir to Umarga, District Usmanabad. During enquiry, the Applicant No.2 disclosed the name of the Applicant No.1 Shivkumar Rathod as the owner of the truck. He stated that the rice is being transported as per the say of Shivkumar. The description of the rice did not match with the description of the rice in a invoice produced by Rahul Jadhav. On the basis of the complaint lodged, the offence was registered, which is under investigation. A written communication is sent to Tahsildar Akkalkot to report as to whether the rice is for distribution in the Fair Price Shop (Ration Shop). According to the prosecution, the owner/driver of the truck have not produced proper invoice and E way bill of the rice.

3. I have heard the learned counsel for the parties. Perused record.

4. The learned counsel for the Applicant submitted that E way bill is not required for transport of Rice as the said item is exempted. Reliance is placed on the decision of the Division Bench of this Court at Nagpur in Criminal Application No.1013/2018 dated 21

February 2020, in order to submit that Maharashtra Scheduled Commodities Whole-Sale Dealers' Licensing Order, 1998 does not include Rice as an essential commodity. Reliance is also placed on the Removal of (Licensing Requirements Stock Limits and Movement Restrictions) Order, 2016 (order dated 29 September 2016) under section 3 of the Essential Commodities Act, 1955 by which the restrictions interalia on the transport of grains and food items including Rice have been removed. It is submitted that the Applicants as owner and driver of the truck were only transporters of the Rice and an invoice is produced before the Investigating Officer. The Rice has already been seized and the custody of the Applicants is not required as their statements are already recorded.

5. The learned APP submitted that there is a necessity of a E way bill for transport of Rice which is not produced. It is submitted that the description of the commodity as well as the originating station and destination were discrepant, for which custody of the Applicants is required.

6. I have considered the submissions made. The Applicants claim to be the transporters of the Rice being the owner and the driver of the vehicle. *Prima facie*, the reliance placed on the 1998 and the 2016 order is misplaced, in as much as the 1998 order applies to a whole sale dealer. The Applicants are not and do not

claim to be whole sale dealers. In the decision of the Division Bench, the petitioner who was found to be having a valid licence as a whole sale dealer had sought quashing of the FIR. In so far as the 2016 order is concerned, it removes restriction on the transport of the commodities as mentioned therein which indeed includes Rice. However the gist of the offence in this case is diversion/ transport of Rice meant for distribution in a Fair Price Shop. Nonetheless, I find that protection can be granted to the Applicants for a different reason. A perusal of the record indicates that the Applicant Rahul Jadhav was taken into custody and handed over to Kashinath Gole and the Applicant Shivkumar Rathod with a 'possession receipt' undertaking to produce them whenever required. It is not known as to how the accused once in the custody could have been handed over to a private individual and that too a co-accused. The record also indicates that the statements of the Applicants are recorded on 26 and 27 July 2021. If at all the Investigating Officer genuinely required the custody of the Applicants for investigation, they could have been formally arrested. That apart, the Rice has already been seized and deposited with the authorities. Till today, the report from the Tahsildar is not received.

7. The learned APP submitted that it transpired in the investigation that the Rice was being transported as per the order of Jai Bhavani Transport. If that be so, the Investigating Officer can

carry out investigation in that regard. For the present, I decline to hold that the custody of the Applicants is required for the purposes of jurisdiction for the reason that their statements are already recorded when they were not taken into custody or arrested and quite to the contrary, the custody of the Applicant Rahul Jadhav is handed over to a private individual and the Applicant No.1. In my considered view, the Applicants can be directed to join and cooperate with the investigation.

8. Hence, the following order.

ORDER

1. In the event of their arrest in connection with investigation of Crime No. 468/2021 of Police Station Akkalkot South, District Solapur, the Applicants be released on bail on executing a P.R. Bond of Rs.25,000/- each with one or two solvent sureties each in the like amount.
2. The Applicants shall report to the Investigating Officer on 14/2/2022 and 15/2/2022 between 11.00 a.m. to 1.00 p.m. and as and when required by the Investigating Officer.
3. The Applicant shall cooperate with the Investigating Agency and shall not tamper with the prosecution evidence / witnesses.

4. The Criminal Application is disposed of, in the aforesaid terms.

C.V. BHADANG, J.