

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY :**  
**NAGPUR BENCH : NAGPUR.**

**CRIMINAL APPLICATION [APL] NO. 1572/2022.**

Chandrashekhar Bajranglal Varma,  
Aged about 50 years,, Occupation  
Business, Resident of Ganesh  
Colony, Shilangan Road,  
Amravati, Taluq and District  
Amravati.

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**APPLICANT.**

**VERSUS**

1.State of Maharashtra,  
through Police Station Officer,  
Police Station Taluq Rajapeth,  
District Amravati.

2.Ujwal s/o Rajendraraao Madsane,  
Aged about 41 years,  
resident of Aachal Vihar, Akoli  
Road, Amravati, Taluq and  
District Amravati.

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**NON-APPLICANTS.**

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Mr. A.S. Mardikar, Senior Advocate with Shri P.V. Navlani,  
Advocate for the Applicant.  
Mr. N.R. Rode, A.P.P. for Non-applicant No.1 /State.  
Non-applicant No.2 – Served.  
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**CORAM : VINAY JOSHI AND  
VALMIKI SA MENEZES,, JJ.**  
**DATE : AUGUST 08, 2023.**

**ORAL JUDGMENT (PER VINAY JOSHI, J) :**

**Admit.** Heard finally by consent of the learned Counsel appearing for the respective parties.

2. This is an application in terms of Section 482 of the Code of Criminal Procedure seeking to quash the first information report bearing Crime No.677/2022 registered with Rajapeth Police Station, Amravati for the offence punishable under Sections 420, 409, 411 read with Section 34 of the Indian Penal Code, as well as related charge sheet bearing R.C.C.No.1883/2022 pending on the file of the Judicial Magistrate First Class, Amravati.

3. The applicant is a Goldsmith and indulging into the business of purchase and sale of gold. He is running a shop in the name and style of 'Bajranglal Chhotelal Verma Jewelers'. One of the customer of Union Bank of India, Rajapeth Branch, made a

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complaint on which a fraud has been unearthed. So far as the applicant is concerned, it is alleged that the applicant, by joining hands with the co-accused has purchased stolen gold.

4. It is applicant's case that mother of co-accused Satish Bhondve was his regular customer. On 21.04.2022, Satish Bhondve came to the applicant with a request to sell ancestral gold, as he was in need of money. Since Satish utterly urged for his need, the applicant had purchased 193.300 grams of gold from Satish. On the instructions of Satish, the applicant has transferred an amount of Rs.6,75,000/- by R.T.G.S. in the account name of one Pravin Dafaar. The applicant did not have knowledge that the said gold was stolen from the Bank, and thus, there is total absence of *mens rea*. The applicant has no reason to know about the fraud committed in the Bank. According to the applicant, the charge sheet is bulky. All allegations of fraud are against the Bank officials. There is no material against the applicant, hence, he seeks for discharge.

5. The learned A.P.P. has resisted the application by contending that the applicant always used to purchase stolen gold.

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The gold lump was seized from him and thus, his involvement is evident.

6. It is the case of the prosecution that the complainant had availed gold loan facility from Union Bank of India by depositing gold ornaments. Later on it was revealed that the original gold was exchanged with fake gold, and thus, the customer lodged a report. During enquiry it was found that like applicant, in other cases also original gold was replaced, and therefore, crime was registered mainly against the Bank officials.

7. Though the charge sheet is bulky, the learned A.P.P. is able to point out only two statements of witnesses namely Pravin Dafaar and Dinesh Gade concerning the applicant. Pravin Dafaar has stated that at the instance of co-accused Pavan Parekar, who is his relative, he has availed gold loan from Union Bank of India. It is his statement that he has received a sum of Rs.6,75,000/- by account transfer from the applicant. He has enquired with the applicant as to why the money was transferred, on which the applicant stated that he has sold the gold and therefore, the money was transferred.

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Witness Pravin Dagar states that he did not sold gold, however, the amount came to his account from the applicant.

8. The learned Counsel appearing for the applicant took us through a receipt issued by the applicant- jeweler towards purchase of gold. It reveals that the applicant has purchased 139.176 grams gold for which he has paid Rs.6,75,000/- through R.T.G.S. The receipt discloses the mode of payment as stated by the applicant. It reveals that though Satish Bhandve sold the gold, however, he has provided account number of his kin Pravin Dagar for transfer of money. According to the applicant, only at the instance of Satish, he made payment in the account number which was provided by Satish. There appears to be no dispute that Satish Bhandve sold gold ornaments and on his instructions, the amount was deposited in the account of Pravin Dagar. From said circumstance, it is difficult to gather knowledge of applicant about stolen gold. It is a common knowledge that no one would indulge in purchase of stolen articles by accounting and issuing receipt, that too by paying money by way of R.T.G.S.

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9. Besides that the learned A.P.P. took us through the statement of one Dinesh Gade. This witness is brother-in-law of the co-accused Pavan Parekar. He has stated that at the instance of Pavan Parekar, he has availed gold loan facility. According to him, at the instance of Pravin Dafaar, he went to applicant's shop for sale of gold, however, the said material nowhere indicates that either applicant had purchased gold or had any knowledge about the gold ornaments. The learned Counsel for the applicant would submit that in absence of essential ingredients of *mens rea*, the offence punishable under Section 411 of the Indian Penal Code cannot be made out. In support of said contention, he has relied on the decision of Supreme Court in case of **Shiv Kumar .vrs. State of Madhya Pradesh – [2022] 9 SCC 676**.

10. We have carefully examined the entire material. Besides above referred two statements, the prosecution is unable to point out any material against the applicant. Even if the prosecution case is taken at its face value and accepted in its entirety, it does not make out a *prima facie* case to constitute the charged offence. The contention of the applicant that he has purchased the goods and

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made payment through R.T.G.S. by issuing a receipt, is not in dispute. The essential ingredients to constitute the offence punishable under Section 411 of the Indian Penal Code are missing. The case squarely falls in criteria nos. 1 and 2 as laid down in paragraph no.108 of the decision of Supreme Court in case of **State of Harayana and others .vrs. Bhajan Lal and others – AIR 1992 SC 604.**

11. We are of the considered opinion that a case is made out for interdicting the criminal proceeding by quashing the first information report and the related charge sheet, for the reason that the material available on record does not indicate that the applicant deserve to face trial for charged offence. The continuation of prosecution would amount to abuse of the process of law, and would result in injustice and prevent promotion of justice. The ultimate object of justice is to find out the truth and punish the guilty, as well as to protect the innocent. Experience reveals that long and protracted criminal trials lead to raucous, acrimony, bitterness in parties. The Court will be well justified in preventing injustice by invoking the inherent powers. Facing a criminal trial is of serious

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consequences. In view of above, Criminal Application deserves to be allowed, hence, the following order.

**ORDER**

- [i] Criminal Application is allowed and disposed of.
- [ii] The first information report bearing Crime No.677/2022 registered with Rajapeth Police Station, Amravati for the offence punishable under Sections 420, 409, 411 read with Section 34 of the Indian Penal Code, as well as related charge sheet bearing R.C.C.No.1883/2022 pending on the file of the Judicial Magistrate First Class, Amravati. is hereby quashed and set aside, so far as the applicant - Chandrashekhar Bajranglal Varma is concerned.

**JUDGE**

**JUDGE**

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