

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

**Anticipatory Bail Application No.1365 of 2024**

1) Mirza Dilshad Baig Mirza

Zakaullah Baig,

Age:-30 yrs. Occu. Business

R/o. RPTS Road, Gulzar Pura,  
Old City, Akola

2) Shaikh Firoz Shaikh Farid

Age:-39 yrs. Occu. - Driver

R/at – Washim Road,  
Chand Kha Plot,  
Akola (Rural), Akola

3) Shaikh Kareem Shaikh Ibbrahim

Near Janta Medical, Bhandpura Chauk,  
June Shahar, Akot, Akola 444002.

... Applicants

v/s.

The State of Maharashtra

Through Senior Police Inspector

with Kasara Police Station,

Near Kasara Railway Station,

Kasara Bazaar Peth, Tal. Shahapur

... Respondent

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Mr Yogesh More, for the Applicants.

Mr MG Patil, APP, for Respondent/State.

PSI Sagar Jadhav, Kasara Police Station, District Thane Gramin,  
present.

**Coram : R.N. Laddha, J.**

**Date : 19 July 2024.**

**P.C. :**

Heard Mr Yogesh More, the learned Counsel, appearing on behalf of the applicants, and Mr MG Patil, the learned Additional Public Prosecutor representing the respondent/ State.

2. By this application, the applicants seek pre-arrest bail in CR No.64 of 2024, registered at Kasara Police Station, for the offences punishable under Sections 407 and 435, read with 34 of the Indian Penal Code.

3. The informant, a businessman and director of Durgottam Industry in Pusad, received an order for 25.80 tons of Tur Dal to be supplied in Mankoli, Thane, on 10.03.2024. The informant contacted Dashmesh Roadlines Transport, Khamgaon, Buldhana, to transport the stock. Truck MH-27-BX-7674, owned by applicant No.1, collected the stock from the informant for transportation to Mankoli. On 30.03.2024, the truck proceeded towards Mankoli with applicants No.2 and 3 as the drivers. The informant kept track of the truck's location and updates. However, on 02.04.2024, the driver's mobile phone was switched off around 10:00 a.m. Later, at 10:30 a.m., supervisor Sachin Handare, contacted Dashmesh Roadlines' owner, Pritpal Singh and learnt that the truck had been met with an accident in Kasara Ghat, and stock had been burnt. Suspecting foul play, the

informant personally visited the accident site and discovered that the applicants, in collusion with each other, staged an accident, burnt the entrusted goods, and looted them.

4. Mr Yogesh More, the learned Counsel for the applicants, submits that applicant No.2 met with an accident while descending the Kasara Ghat due to a truck breakdown. In an attempt to save himself from the uncontrolled truck, Applicant No.2 leapt out and sustained injuries to his shoulder and other body parts. He also lost his mobile phone during the incident. Subsequently, applicant No.2 remained at the accident site until 4:30 a.m., when he was joined by applicant No.1. Concerned for their safety, a police patrolling team advised them to leave the spot. Applicant No.1 took Applicant No.2 to the hospital for treatment.

5. According to the learned Counsel, the FIR was not lodged on the day of the incident due to the unavailability of the police officer who would write it. Applicants No.1 and 2 were assured that the panchnama would be prepared the following day, 0.304.2022. Subsequently, applicants No.1 and 2 visited the accident site and found that some individuals were looting the consignment. Despite Applicant No.1's attempt to object, they attacked him. The learned Counsel emphasises that the informant

does not explicitly attribute any role to Applicant No.1. Applicant No.3 had a limited role, involving dropping off the truck in Akola and handing it over to Applicant No.2. The photographs depict that the Tur Dal was both burnt and stolen by the strangers, and the situation was beyond the control of the Applicants.

6. Mr MG Patil, the learned APP, contends that there is a discrepancy between the mobile location data and the explanation provided by the applicants. According to the learned APP, the CCTV footage, discovered that on 1.4.2024 the truck was found without goods at various locations. The investigation is at the initial stage.

7. It is a settled position in law that the power to grant anticipatory bail is extraordinary. While it has been acknowledged in many instances that regular bail is considered a general rule, the same analogy cannot be applied to anticipatory bail. The decision to grant anticipatory bail must be exercised with careful and prudent discretion by the Court, considering each case's specific circumstances. A straight jacket formula cannot be applied. While exercising this power, the Court must exercise caution, as granting protection in serious cases could potentially lead to a miscarriage of justice or hinder the

investigation by allowing tampering or destroying evidence. A profitable reference in this regard can be made to the decision of the Hon'ble Supreme Court in *Shrikant Upadhyay & Ors. v. State of Bihar & Anr.*<sup>1</sup>

8. After perusing the records, there appears to be a discrepancy between the mobile location data and the explanation provided by the applicants. On 01.04.2024, the truck was captured on CCTV footage at Dassarkhed, Nashirabad, Chandvad, Pimpalgaon, and Ghoti Toll Nakas without any goods. The truck, transporting goods, left Khamgaon on 30.03.2024, bound for Mankoli. The alleged accident occurred on 02.04.2024 and was reported on 03.04.2024. The medical report shows no visible injuries on the person of Applicant No.2. While the entrustment of the goods is not in dispute, the available material does not support the applicant's claim that the goods were looted after the incident. The truck was loaded with 25.80 tons of Tur Dal, yet only one ton was found in a burnt condition. It is difficult to comprehend that, following the accident, with such a large quantity of Tur Dal burning, the patrolling police did not act promptly to extinguish the fires and protect the goods from potential looting. Additionally, it is difficult to believe that the FIR was not recorded due to the

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1 2024 SCC OnLine SC 282.

absence of the police officer's writer at the police station. In view of the above, and having regard to the fact that the investigation is at a nascent stage, custodial interrogation of the applicants would be necessary.

9. Accordingly, the application stands rejected.

[ R.N. Laddha, J. ]