

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 5899 OF 2015

Fuzil Hammed Khan s/o
Gulam Ali Khan

..... APPLICANT

V E R S U S

The State of Maharashtra

.... RESPONDENT

.....

Ms. Fatema Kazi h/f Mr. S.S.Kazi,

Advocate for Applicant.

Mr. S.M.Ganachari, A.P.P. for Resp. - State.

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CORAM : INDIRA K. JAIN, J.

DATE : 21st NOVEMBER, 2015

ORAL ORDER :-

. Leave to amend.

2. Here is an application for pre-arrest bail in Crime No. 0183/2015 registered with Begumpura police station, Aurangabad for the offences punishable u/ss 406 and 420 of the Indian Penal Code.

3. Heard Ms. Fatema Kazi holding for Mr. S.S.Kazi, learned counsel for Applicant and Mr.

S.M.Ganachari, learned A.P.P. for Respondent – State.

4. On 13/10/2015 Karanjitsing Sukindarsing Bacher lodged a report against the applicant and one Prafulla Nisar Proprietor of Platinum Auto at Andheri [West], Mumbai. Complainant claims himself to be the owner of a car bearing No. MH 43 AJ 5250. He was to sell the car and so it was given to Prafulla Nisar Proprietor of the firm. Prafulla Nisar informed the complainant that applicant had agreed to purchase the said car for ₹ 12,80,000/- [Rupees Twelve Lacs Eighty Thousand] and payment would be made within a month. Complainant was also asked to hand over the original papers for the delivery of car. When complainant went to the show room of Prafulla Nisar for making further inquiry he found that the show room was closed. He tried to contact Prafulla Nisar on phone but Prafulla Nisar did not attend the call. So complainant contacted the applicant and came to know through applicant that car was with the applicant. Complainant then inquired from the applicant about the payment. Applicant told him that payment was made to Prafulla Nisar on borrowing loan of ₹ 8,50,000/- from a co-operative bank. Original papers of the car were with the complainant and he realized that he was cheated and applicant committed criminal breach of trust, so report was lodged and the above said crime came to be registered.

5. According to applicant, he made payment of ₹ 11,50,000/- on borrowing loan of ₹ 8,50,000/- from a

co-operative bank. Accordingly receipt was issued to him but original papers were not delivered to him. He reported the same on 05/10/2015 to Police Inspector, police station Satara that despite entire payment towards purchase of car, original papers were not delivered to him and prayed to take necessary action.

6. During the course of arguments, learned counsel for applicant referred to the receipt dated 05/02/2015 issued by the authorized signatory of Platinum Auto Works Pvt. Ltd. It shows that Company had received ₹ 4,00,000/- in cash on 05/02/2015 and remaining amount was to be received within ten days. Another receipt dated 03/03/2015 indicates that a sum of ₹ 8,50,000/- was received by the authorized signatory of the said Company from the applicant towards full payment of car in question. At this stage these receipts are enough to show that allegations made in the complaint against the applicant are prima facie doubtful. The question of custodial interrogation of the applicant would not arise since the loan was sanctioned by a co-operative bank and the car in question was handed over by the complainant to the Police Commissioner, Aurangabad in pursuance to the Order dated 27/10/2015 passed by the Division Bench of this Court in Criminal Application No. 5896 of 2015.

7. On a specific query to the learned A.P.P. regarding action taken on the report of applicant, letter dated 17/11/2015 by police head constable of Satara

police station is submitted by learned A.P.P. The same is taken on record and marked 'X' for identification. It shows that on 17/11/2015 applicant was informed to take appropriate action as the allegations in his complaint were of civil nature and the incident had not occurred within the jurisdiction of Satara police station.

8. In this premise, this Court finds it a fit case to grant pre-arrest bail to the applicant. Hence, the following order.

9. (i) Criminal Application No. 5899 of 2015 is allowed.

(ii) In the event of arrest of applicant Fuzil Hammed Khan s/o Gulam Ali Khan in Crime No. 0183/2015 registered with Begumpura police station, Aurangabad for the offences punishable u/ss 406 and 420 of the Indian Penal Code he shall be released on bail on P.R. and S.B. of ₹ 20,000/- [Rupees Twenty Thousand] each.

(iii) Applicant shall not tamper with the prosecution evidence and shall make himself available as and when required.

**[INDIRA K. JAIN]
JUDGE**