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

CRIMINAL APPLICATION NO.86 OF 2016

1. Bhaveshkumar s/o Dhanjibhai Sarvaiya,
2. Sayyad Mohammad Ali,
3. Harshal s/o Devidas Joje ..APPLICANTS

VERSUS

The State of Maharashtra ..RESPONDENT

Mr S.G. Ladda, Advocate for applicants;
Mr S.M. Ganachari, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 25th January, 2016

ORDER :

By the present application under section 438 of the Code of Criminal Procedure, the applicants seek their release on pre-arrest bail, in connection with C.R. No.240 of 2015, registered with Dhule City Police Station, Dhule, for offences punishable under sections 406, 420 read with section 34 of the Indian Penal Code and under sections 4 and 5 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

2. Upon perusal of the first information report, the story of the prosecution narrated therein is that the applicants are the office bearers of a company registered under the Companies Act and have floated a scheme, in relation to displaying advertisements on the transport vehicles, for which under Rule 134 of the Maharashtra Motor Vehicles Rules,

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permission of the Regional Transport authority and/or the competent authority was not required.

3. It is claimed by the complainant that the applicants herein have not honoured the commitment and as such have committed the offences in question.

4. Learned Counsel appearing on behalf of the applicants would urge that the complainant is not the owner of the vehicle, but it is somebody else who is owner of the vehicle and the complainant, based on somebody else's vehicle, has lodged complaint and satisfaction of conditions for payment were not complied with to its requirement.

5. Learned Counsel submits that at the most, the complainant can be entitled for a relief of specific performance of contract, if there is any concluded contract of business or if the cheque is dishonoured, remedy lies elsewhere. Thus, he prayed for release of applicants on pre-arrest bail.

6. Learned Addl. Public Prosecutor has opposed the application on the ground that the applicants herein, who are office bearers of the company, have also cheated two other similarly situated persons. He, therefore, prayed to reject the application.

7. Perused the investigation papers. *Prima facie*, it appears that the

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applicants herein, pursuant to the object of the company, have promised certain monetary returns to the individual vehicle holders, who are permitted under the Motor Vehicles Act to display certain advertisements, without prior permission of the competent authority. It appears from the contents of the first information report and the investigation papers that the payment that was promised by the applicants, was not made to the complainant.

8. In my opinion, the claim as is stated to have been resulted into lodging of the first information report, speaks of contractual obligation, if any, and the claim that there is *mens rea* for commission of the crime is required to be ignored, having regard to the provisions of Rule 134 of the Maharashtra Motor Vehicles Rules.

9. Apart from above, in my opinion, custodial interrogation of the applicants is not necessary, as for the alleged business transaction, remedy lies elsewhere. In my opinion, the applicants, therefore, are entitled for pre-arrest bail. I, therefore, pass following order :-

In the event of arrest of the applicants, in connection with C.R. No.240 of 2015, registered with Dhule City Police Station, Dhule, for offences punishable under sections 406, 420 read with section 34 of the Indian Penal Code and under sections 4 and 5 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, they be released on bail, on each of them furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

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The applicants shall attend the concerned police station initially during the period from 1st February, 2016 to 4th February, 2016, between 10.00 a.m. and 12 noon and thereafter as and when called by the Investigating Officer.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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