

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 12 OF 2016

MR. S. RAMESH KUMAR @ RARNESHKUMAR
S.

... Applicant

Versus

POLICE INSPECTOR INCHARGE, PONDA
POLICE STATION AND ANR.,

... Respondents

Mr. Rohit Bras De Sa, Advocate for the applicant.

Mr. S. R. Rivankar, Public Prosecutor for the respondents.

Coram:- C. V. BHADANG, J.

Date:- 8th August, 2016

P.C.

By this application, the applicant is seeking pre-arrest bail as the applicant is apprehending arrest in connection with the investigation of Crime No.300/2015, registered with Police Station, Ponda, under Sections 406 and 420 of Indian Penal Code (IPC, for short).

2. The prosecution case is that the complainant Shri Javed Kazi lodged the complaint on 09/11/2015 with P.S., Ponda, to the effect that in the month of May, 2014 at Khadapaband, the applicant agreed to purchase BMW Car bearing No.GA-05-F-0009 belonging to the complainant for Rs.89 Lakhs and took the possession of the said Car, but has failed to pay the amount nor has returned the vehicle.

3. It appears that during the course of investigation, the BMW Car

was seized from A. M. Cars India Garage, Kasturinagar at Bangalore, Karnataka, where the Car was lodged for repairs by the applicant. It further transpired in the investigation that the said Car had met with an accident when it was in the possession of the applicant. According to the prosecution, the applicant accused had prepared forged documents and produced the same with Bajaj Allianz General Insurance Company Ltd. and claimed an amount of Rs.35 Lakhs from the Insurance Company. Out of the said insurance claim, Rs.17 Lakhs were paid to the A.M. Cars India Garage, while the remaining amount of Rs.18 Lakhs was misappropriated by the applicant by forging the signature of the complainant.

4. I have heard Shri De Sa, the learned Counsel for the applicant and Shri Rivankar, the learned Public Prosecutor for the State.

5. It is submitted by the learned for the applicant that the dispute is purely of civil nature and does not involve any element of cheating or misappropriation. The learned Counsel has pointed out to a consent letter dated 06/05/2014 sent by the complainant, in which the complainant had stated that he is voluntarily accepting the insurance claim of Rs.35 Lakhs. It is submitted that this letter, which is a notorised letter, is not disputed. The learned Counsel points out that the subsequent letter dated 08/05/2014, which according to the prosecution, bears a forged signature of the complainant, would not make out any case of cheating as such. The learned Counsel has

placed reliance on the decision of Gujrat High Court in the case of MOHANBHAI CHOTUBHAI PATEL AND OTHERS VS. STATE OF GUJARAT; 2014 SCC ONLINE GUJ 13303, which refers to the decision of the Supreme Court in the case of MOHAMMAD IBRAHIM VS. STATE OF BIHAR; 2010(1) GLH 184. The learned Counsel submits that the applicant has lost the keys of the BMW Car and the applicant is ready and willing to co-operate with the Investigating Agency and to bear the expenses, if any, for obtaining the duplicate key, without prejudice to the case set up by the applicant. It is submitted that in such circumstances, the custodial interrogation is not necessary.

6. Shri Rivankar, the learned Public Prosecutor has submitted that the letter dated 08/05/2014 bears a forged signature of the complainant and it is necessary to send the said document for report of the Handwriting Expert, for which the specimen signature of the applicant, would be necessary. It is submitted that it is the applicant's own case that he had received two keys of the Car and as such, for recovery of the said keys, the custody of the applicant is necessary. The learned Public Prosecutor points out that the amount of Rs.18 Lakhs received by the applicant from out of the insurance claim, is also required to be traced and investigated. He, therefore, submits that the custodial interrogation of the applicant is necessary.

7. I have carefully considered the rival circumstances and the

submissions made.

8. At the outset, it is necessary to state that the Investigating Officer has seized the Car and it is presently in the custody of the Investigating Agency. Merely for the purposes of the recovery of the keys, the custodial interrogation of the applicant may not be necessary. The applicant can be put to appropriate conditions to ensure that he obtains/ co-operates with the Investigating Agency, in obtaining the duplicate keys.

9. Coming to the aspect of forgery of the signature on the letter 08/05/2014, it is not in dispute that the complainant has given a consent letter dated 06/05/2014. In other words, the complainant is not disputing the signature and the execution of the said document dated 06/05/2014. The question is only about the investigation into the signature on the letter dated 08/05/2014. The learned Public Prosecutor fairly submitted that till today, the said document has not been sent for the examination of the Handwriting Expert. The learned Counsel for the applicant, on instructions, states that the applicant is ready and willing to give his specimen signature as and when required by the Investigating Officer. In that case, after obtaining the specimen signature, the admitted signature and the questioned document dated 08/05/2014 can be sent for examination by an Handwriting Expert. Even so far as the amount of Insurance Claim is concerned, indisputably, out of the total claim of Rs.35

Lakhs, Rs.17 Lakhs are directly paid to the Garage Owner. The learned Counsel for the applicant states that the remaining amount has been transferred to his Account by RTGS. Even in the document dated 08/05/2014, the applicant has given RTGS details, including IFS Code of the Savings Account with the Union of India, Ponda Branch, Goa. Thus, prima facie, at this stage, there is no material to show that any such amount was received in cash by the applicant. Prima facie, it appears that after the alleged forged letter was given by the applicant on 08/05/2014, the complaint is lodged after a year and half thereof i.e. on 09/11/2015. Considering the overall circumstances and the nature of offence, I do not find that the custodial interrogation of the applicant would be necessary. The applicant can be put to appropriate conditions. Hence, the following order is passed :

ORDER

(i) In the event of arrest in connection with investigation of Crime No.300/2015 of P.S. Ponda, the applicant shall be released on bail on executing a P.R. Bond in the sum of Rs.50,000/-, with one or two solvent sureties in the like amount.

(ii) The applicant shall attend the Investigating Officer on 17/08/2016 and shall furnish his specimen signature to the Investigating Officer.

(iii) The applicant shall co-operate with the Investigating Agency as and when required and shall not tamper with or influence the prosecution witnesses or evidence.

(iv) The applicant shall obtain/ co-operate with the Investigating Agency in obtaining the duplicate keys of the BMW Car, including incurring of any cost therefor.

(v) In the event of breach of any of the conditions, liberty to the prosecution to move for cancellation.

(vi) Criminal Application is disposed of in the aforesaid terms.

C. V. BHADANG, J.

SMA