

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

**933 ANTICIPATORY BAIL APPLICATION
NO.899 OF 2020**

**ARJUN S/O VISHNU GAWALI
VERSUS
STATE OF MAHARASHTRA**

...
Mr.N.S.Ghanekar, Advocate for the applicant.
Ms.R.P.Gaur, APP for the respondent-State.

...
**CORAM : V.L.ACHLIYA,J.
DATE : 02.12.2020**

P.C.

1] On an apprehension of arrest in connection with Crime No. 0398 of 2020 registered with Karmad Police Station, District Aurangabad, for the offence punishable u/s. 406 of the IPC, the applicant has preferred this Application seeking anticipatory bail.

2] Heard learned counsel for the applicant-accused and learned APP representing the respondent-State. Perused

the first information report as well as the copy of the order passed by the learned Additional Sessions Judge and photo copy of the agreement to sell of the vehicle entered between the father of the informant and one Dnyaneshwar Galdhar.

3] In brief, it is the contention of the learned counsel for the applicant that the complaint lodged is false and frivolous and nothing but abuse of process of law on the part of the informant. It is submitted that the applicant is no way concerned with the vehicle referred in the complaint. In fact, the vehicle referred in the complaint was owned by the father of the informant, who has secured loan through Finance Company, namely, Shriram Finance Company. On 07.02.2018, the father of the informant entered into an agreement with Dnyaneshwar Pandurang Galdhar to sell the said vehicle

for the sum of Rs.4,97,000/- on the terms and conditions incorporated in the agreement of sale executed on 07.02.2018. The amount of Rs.95,000/- was paid to the father of the informant and balance amount of Rs.4,02,000/- to be payable to Shriram Finance Company with whom the vehicle was hypothecated. There was default on the part of the alleged purchaser in paying the installments due and payable to Shriram Finance Company. Due to said default, the officials of the Company approached the informant to take custody of the vehicle. The officials of the Finance Company disclosed to informant that the amount of Rs.2,42,000/- is due and payable towards vehicle purchased by his father. Therefore, the applicant approached the applicant and Dhananjay and asked as to why they committed default in payment of installment to Shriram Finance Company. In the light of the allegations made in the

complaint, learned counsel submits that the allegations made in complaint itself discloses no *prima facie* case to attract offence under Section 406 of the IPC against the applicant.

4] On the other hand, learned APP supported the order passed by the learned Additional Sessions Judge and submits that in order to conduct proper investigation and to secure custody of the vehicle, custodial interrogation of the applicant may be required.

5] I have carefully considered the submissions advanced in the light of overall facts of the case, nature of the accusations made against the applicant and the order passed by the learned Additional Sessions Judge. From the order passed by learned Additional Sessions Judge it appears that there was total non application of mind. It

was expected on the part of the learned Judge to have read the complaint at least to find out as to whether *prima facie* case exist to attract offence under Section 406 of the IPC against the applicant.

6] If we consider the allegations made in the complaint then there is no entrustment of any property. The vehicle in question was purchased by the father of the applicant, who had entrusted the custody of the said vehicle to Dnyaneshwar Galdhar as per *bipartite* agreement sale of vehicle entered in between them. Default in paying installment due and payable to Finance Company itself not sufficient to attract the commission of offence u/s.406 of the IPC. The applicant is neither the purchaser of the said vehicle nor same was entrusted to him by deceased father of informant. In absence of any entrustment of vehicle and privity of contract, no

offence u/s.406 of IPC *prima facie* attracted against the applicant. In that view, it is necessary to extend the protection u/s. 438 of the Criminal Procedure Code to save the applicant from arrest and humiliation. Hence the following order.

ORDER

i] The application is allowed.

ii] The interim bail granted vide order dated 15.10.2020 is confirmed and made absolute on same condition. The applicant shall co-operate with the Investigating Agency and appear before the Investigating Officer as and when directed by the Investigating Officer.

iii] The application is disposed of in above terms.

iv] It is clarified that the observations made in the order are made for limited purpose of deciding the present application. None of the observations made to

be treated as observations made as to merit of the case of prosecution against the applicant.

[V.L.ACHLIYA]
JUDGE

DDC