IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 671 OF 2021

Tausif Iqbal Ansari,
Age 38 years, Occu: Business,
R/o Fat No. 304, "C" Wing,
Siddhivinayak Park, Ganesh Baba Nagar,
Ashoka Marg, Nashik 422 001 ... **Applicant**

VERSUS

1. The State of Maharashtra,
Through Mohadi Police Station,
Dhule, District Dhule ... **Respondents**

2. The Superintendent of Police,
Dhule, Dist. Dhule

Mr. K. C. Sant, Advocate for the applicant,
Mr S. B. Narwade, A.P.P. for the State.

CORAM	:	V. G. BISHT, J.
RESERVED ON	:	25th August, 2021
PRONOUNCED ON	:	3rd September, 2021

ORDER:

1. This is an application under section 438 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No.0061/2021 registered with Mohadi Police Station, District Dhule for the offences punishable under Sections 406, 420,465, 467, 468, 471, 472, 34 of the Indian Penal Code, 1860.

2. It is the case of the prosecution that accused Layakat Ali s/o Likat Ali Sayyed had taken finance and purchased two vehicles namely

TATA LPT 3118/56 COWL bearing registration No. MH-20-18-BA-8188 and TATA LPT 3118/56 COWL bearing registration No.MH-18-AZ-8188. Both the said vehicles were hypothecated with Mahindra & Mahindra Financial Services Ltd. from whom the finance was taken. The hypothecation was also shown in the record of R.T.O. The prosecution alleges that as per conditions, it was necessary not to transfer the vehicles or create third party interest in respect of said vehicles. However, in breach of the conditions, the said accused transferred the vehicle in favour of the present applicant without prior permission of the finance company and in the R.T.O. record, name of the applicant is recorded as owner. When this fact came to the knowledge of the finance company, it find that forged signatures were used while transferring the vehicles in the record of R.T.O. The applicant has even prepared fabricated documents such as no objection letter for transfer of vehicles etc. In this backdrop, the first information report came to be lodged.

3. Mr. K. C. Sant, learned counsel for the applicant, submits that vague allegations are levelled against the applicant. According to the learned counsel, it is a matter of record that Police authority and R.T.O. authority were requesting the finance company to provide certain documents, however, it did not furnish the required documents in time. To substantiate his submission, learned counsel invited my attention to Exh.B and Exh.C produced on record. Since the information were not supplied, the vehicles stood transferred in the name of applicant after

satisfaction of the R.T.O. authority. Learned counsel then next submitted that already the documents which are alleged to have been forged are in the custody of the Investigating Officer. There is nothing to recover from the applicant and therefore, the present application deserves to be allowed.

4. Mr.S. B. Narwade, learned A.P.P., would oppose the submissions by contending that the present applicant and the accused both colluded with each other and prepared forged documents and they also submitted forged N.O.C. on behalf of the finance company. In this regard, learned A.P.P. invited my attention to the statement of prosecution witness. Learned A.P.P. also invited my attention to the documents filed at page 68 of his compilation wherein it is requested that the papers so submitted by the applicant should not be entertained as those papers were fake and forged one. Investigation is going on and having regard to nature of offence, custody of the applicant is necessary, argued learned A.P.P.

5. Before adverting to the documents filed on record by learned counsel for the applicant, it is necessary to go through the document which is on record of learned A.P.P. at page 68 of his compilation. It is letter dated 23.10.2018 written on behalf of the Finance Company and addressed to the R.T.O., Dhule. It was with reference to the application of the present applicant for hypothecation termination. The company informed the R.T.O. that there was no agreement between the finance

company and the applicant and that no such confirmation letter dated 06.10.2018 was issued by the Company and the same is fake and forged one. It also requested the R.T. O. authority not to entertain the application regarding transfer of vehicle/ hypothecation termination purposes. However, it is not clear as to what happened thereafter.

6. Now coming to the document which is at Exhibit-B, dated 30.12.2019, this letter is addressed by the R.T. O. Dhule to the said finance company in respect of the vehicles in question. The R.T.O. informed the said finance company that the applicant had filed no objection certificate in respect of termination of hypothecation on the vehicles in question issued by the finance company. But since the objection was taken by the company and despite repeated requests and letters, the finance company had not taken any action, in the circumstance, the R.T.O. informed the finance company that said no objection certificate was given by the finance company itself and accordingly the hypothecation of was removed/ terminated upon the said vehicles. Even the R.T.O. authority wrote a letter to the Police Inspector, Mohadi Police Station on the same day and informed that despite several requests the finance company had not taken any steps and also sought response from the said Police Inspector that if there is any objection in respect of termination/removal of hypthecation then the objection should be filed within four days. However, there is

nothing on record to suggest that any objection was taken by said Police Inspector of Mohadi Police Station.

7. Now I again come to the letter written by said finance company in response to the letter dated 30.12.20219 issued by the R.T.O. Dhule (Exhibit-B) requesting the R.T.O. to keep in abeyance the removal/termination of hypothecation upon the vehicle in questions till the out come of the criminal complaint and order thereon by the concerned Court. However and interestingly, this letter came to be issued on 31.12.2019 whereas the R.T.O. authority, vide letter dated 30.12.2019 (Exh. B) informed the finance company about the removal/termination of hypothection.

8. Since there was no response from the concerned finance company, the R.T.O. followed its own procedure and accordingly removed the hypothecation existing upon the said vehicles. Prima facie, in such circumstance, the applicant cannot be faulted with.

9. Even otherwise all the necessary documents are in custody of the investigating officer and having regard to the nature of alleged offences and the circumstances plus correspondence between R.T.O. authority and the finance company, in my considered opinion, there is no necessity of custodial interrogation

10. In view of above, I am inclined to allow the application. Hence, following order.

O R D E R

i. In the event of arrest of the applicant in connection with Crime No.0061/2021 registered with Mohadi Police Station, District Dhule for the offences punishable under Sections 406, 420,465, 467, 468, 471, 472, 34 of the Indian Penal Code, 1860, the applicant is directed to be enlarged on bail on his furnishing P.R. Bond of Rs.25,000/- [Rs. Twenty five thousand only], with one or two solvent sureties in the like amount.

ii. The applicant shall attend concerned police station as and when called and shall cooperate with the police in the investigation.

iii. The applicant shall not tamper with prosecution evidence in any manner.

11. Application stands disposed of in the aforesaid terms.

(V. G. BISHT, J.)

JPC