

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1097 OF 2020

Madar Paiganmabar Shaikh	... Applicant
Versus	
State of Maharashtra	... Respondent

Mr. Ujwal R. Agandsurve, Advocate for the Applicant.

Mr. Ajay Patil, APP for the Respondent-State.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 21st JANUARY, 2021

P. C. :-

1. The Applicant is seeking anticipatory bail in connection with C.R.No.973/2020 registered at Vijapur Naka Police Station, Solapur City on 9.10.2020 under Section 406 of the Indian Penal Code.

2. The FIR is lodged on 9.10.2020 by one Omkar Dhekale. He has stated in his FIR that he had purchased two trucks. They were twelve-wheeler trucks. The registration numbers of those Trucks were (i) MH-13-CT-3344 & (ii) MH-13-DH-3334. It is mentioned in the FIR that those trucks were purchased by taking financial assistance from two finance companies and he was repaying the loan. The

monthly EMI was fixed at Rs.67,277/- & Rs.63,430/- in favour of two finance companies. On 15.11.2019, on oral agreement between the informant and the Applicant those trucks were agreed to be sold to the Applicant. A notarized document dated 14.2.2020 was executed. In the meantime, possession of both the trucks was given to the Applicant. In the notarized document it was agreed that the EMIs of both these vehicles were to be paid by the Applicant. In February, 2020 & March, 2020, the informant received messages from the finance companies about non-payment of EMIs. He pursued the matter with the Applicant and he promised that he would make the payments. The informant received a phone call from one Jamil Ahmed Patel. He told the informant that he had purchased those two vehicles from the Applicant and he requested the informant to execute a notarized document for such transfer. The informant had not agreed to any such sale by the Applicant. The Applicant had entered into further transaction with said Jamil Ahmed Patel and, therefore, this FIR is lodged.

3. Heard Shri Ujwal Agandsurve, learned Counsel for the Applicant and Shri Ajay Patil, learned APP for the State.

Submissions :

4. Shri Agandsurve submitted that because of the lock-down, the Applicant could not make the payment of EMIs. He submitted that there was a dispute between Jamil Ahmed Patel and the Applicant as the Applicant did not receive money from him and, therefore, the Applicant is not at fault. The proceeding under Section 138 of Negotiable Instruments Act is initiated by the Applicant against Jamil Ahmed Patel.

5. Learned A.P.P. Shri Patil, on the other hand, submitted that that the entire transaction was fraudulent and impermissible in law and, therefore, the Applicant does not deserve the protection of anticipatory bail.

Reasons :

6. I have considered all these submissions. The FIR itself mentions that the Applicant had further sold these trucks to a third party without telling the informant. He has not repaid the EMIs and has not informed the first informant. The entire transaction is fraudulent.

7. These vehicles are heavy vehicles and, therefore, without informing the RTO, entering into such transaction is itself not only illegal but dangerous to the safety of other vehicles on road. No leniency can be shown to the Applicant.

8. The Applicant's custodial interrogation is also necessary to find out the exact nature of fraud committed by him resulting in loss to the first informant and involving dispute with a third person. There is no merit in the application for anticipatory bail. Hence, the Application is rejected.

(SARANG V. KOTWAL, J.)