

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

CRIMINAL APPLICATION NO. 122 OF 2021

1. Aareshi Mohammed Khaja Pasha
@ Arisa Yunus Radde
Age: 21 Years, Occupation: Housewife,
R/O:- Bhavani Mandir, A-200, Vidi,
Gharkul, Hyderabad Road,
Solapur- 41300.
2. Mohammed Khaja Pasha
Age:- 31 Years, Occupation: Business
R/O:- Bhavani Mandir, A-200, Vidi,
Gharkul, Hyderabad Road,
Solapur- 41300.
3. Arif Ahmed Shaikh
Age:- 39 Years, Occupation: Press Reporter
R/O:- Near Modi Masjid, 102/02 Paach
Kandil, Parisar, Modikhana, Solapur,
Maharashtra, 413001.

...APPLICANTS

Versus

The State of Maharashtra
Through Senior Inspector of Police,
Faujdar Chavdi Police Station,
Solapur.

...RESPONDENT

...

Mr. Mohd. Saeed Asgar Moghul a/w. Ms. Deepa Premchandran for the
Applicants.

Mrs. S.D. Shinde, APP for Respondent-State.

...

**CORAM : S. S. SHINDE &
MANISH PITALE, JJ.**

**RESERVED ON: 12th MARCH 2021.
PRONOUNCED ON: 5th APRIL 2021.**

JUDGMENT [PER S.S. SHINDE, J.]:

. This petition taken an exception to the FIR No. 1157 of 2020 registered with Faujdar Chavdi Police Station, Solapur, for the offences punishable under Section 420 and 34 of Indian Penal Code.

2. It is the case of the applicants that the complainant Mr. Zaheer Tamboli wanted to purchase a four wheeler car, for which he consulted his childhood friend namely Iqbal (who is police personnel at Solapur). On 15.09.2020 Iqbal took him to Auto Heaven Shop which was owned by one Mr. Khaja Pasha. At that time, Mr. Khaja Pasha introduced both of them with his wife Aareshi who was present at the shop. The complainant inquired about Maruti Ciaz car for which shop owner Kahaja Pasha quoted the price Rs. 5,00,000/- (Five Lakhs only), and informed that at present the car is at Mumbai in the godown of Finance Company. The complainant and his friend left the place stating that they will enter into negotiations. Afterwards, Mr. Khaja Pasha called complainant and informed him that he has lowered down the price and ready to sale the old car for Rs. 4,00,000/- (Four Lakhs only), and asked them to come to his shop with an amount of Rs. 3,00,000/- (Three Lakhs only). Accordingly, the complainant asked his brother to deposit Rs. 3,00,000/- (Three lakhs only) into bank account of shop owner. Accordingly, the said amount was deposited.

3. It is the case of the 1st informant that, thereafter, Mr. Khaja Pasha did not meet complainant nor replied to his calls and his shop remained close and hence, the complainant lodged complaint with concerned police station and accordingly the FIR came to be registered. Thereafter, anticipatory bail was granted to Applicant No. 1 by this Court (Coram:-Sarang V. Kotwal, J.) vide order dated 15.01.2021. It is the case of the applicants that that there is no offence made out against the applicants No. 2 and 3 and the impugned FIR is nothing but abuse of process of law and the said FIR is registered with intention to take revenge and teach lesson to the applicants and to extort as money as possible from the applicants.

4. Learned APP appearing for Respondent-State submits that the investigation is in progress and that at this stage, it is difficult to segregate the role of accused persons. The accused have hatched conspiracy and cheated the informant. It is also alleged in the FIR that there are other persons who are cheated by the present accused by accepting money and not handing over possession of vehicles. It is submitted that the applicants were not present in the shop as alleged by the informant, is the defence of the accused, which cannot be considered at the stage of investigation. Such defence can be pleaded during the trial.

5. We have considered the submissions of learned counsel appearing for the applicants and learned APP appearing for Respondent-State. The informant has alleged that, one Iqbal Miya Shaikh took the informant to the Mohammad Khwaja Pasha Mulla, who were having shop for selling old cars. The informant wanted to purchase a car. Therefore, on 15.09.2020, he went to the said shop. At that time, the accused were present in the shop. The photograph of Ciaz car was shown by the accused to the informant and price was quoted Rs. 5,00,000/- (Rupees Five Lakhs only). Thereafter, the informant left the shop and after telephonic discussion with the applicant No. 2, fixed price at Rs. 4,00,000/- (Rupees Four Lakhs only). The informant paid Rs. 3,00,000/- (Rupees Three Lakhs only) in the account of the accused No. 2 for purchase of the car. However, the possession of the car was not given to the informant.

It appears from the perusal of the FIR that the applicant i.e. accused have systematically cheated the informant. If the allegations in the FIR are read in its entirety the alleged offence under Section 420 read with 34 of IPC is disclosed. The contention of the learned counsel appearing for applicant that the allegation against applicant No. 1 was that the applicant No. 1 was merely present in the shop and therefore, the alleged offences are not attracted qua her, cannot be accepted at this stage. There are serious allegations of cheating and conspiracy hatched by the applicants including cheating the present informant and other customers. Unless the

investigation is completed no relief can be granted as prayed by the applicants. There are allegations of conspiracy. The conspiracies are normally hatched in secrecy and, therefore, unless the Investigating Officer is given full opportunity to investigate into the matter, we are not inclined to accede to the prayer of applicants to quash the impugned FIR.

6. Learned counsel appearing for the applicants relied upon the observations made by the learned Single Judge while granting bail to the Applicant No. 1. However, the observations made by the learned Single Judge will have to be read only for the purpose of deciding the said application. While granting bail very brief reasons are assigned, and allegations of conspiracy are not taken into consideration.

7. It appears from the perusal of the annexures to the petition that the Applicant No. 2-Mohammed Khaja Pasha had filed complaint to the officer in-charge of concerned Police Station against Mr. Iqbal Miya Shaikh who is police personnel serving at Solapur, that he has been doing business with the complainant for last two years of purchase and sell of second hand cars in Solapur. In that view of the matter, the complaint filed by the Applicant No. 2 against Mr. Iqbal Miya Shaikh, cannot be taken lightly.

8. In that view of the matter, this Court expects that the Commissioner of Police, Solapur City, Dist. Solapur, will call the record of both the Crime No. 1157 of 2020 registered with Fauzdar Chavdi Police

Station and a complaint filed by Applicant No. 2 against Mr. Iqbal Miya Shaikh, and take appropriate steps to monitor the investigation. It is necessary to cause inquiry of Mr. Iqbal Miya Shaikh who is working in the police department and allegedly involved in sale and purchase of second hand vehicles.

9. In that view of the matter and since the investigation is in progress and yet the Investigating Officer is to find out the wide spread conspiracy of the accused, the prayer of the applicants to quash the impugned FIR, cannot be acceded to. It appears that other customers are also cheated like the informant and therefore, scrupulous investigation needs to be done, not only of the accused, but also of Mr. Iqbal Miya Shaikh.

10. For the reasons aforesated, the application stands rejected.

11. The Commissioner of Police, Solapur City, Dist. Solapur, to submit a report to this Court.

12. List the matter on 4th May, 2021, under the caption 'For Compliance' of directions given to the Commissioner of Police, Solapur City, Dist. Solapur.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)