

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

**ANTICIPATORY BAIL APPLICATION NO. 870 OF 2021
WITH
INTERIM APPLICATION NO. 1168 OF 2021**

Amit Gopi Makhija ... Applicant

Versus

The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO. 1168 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 870 OF 2021**

Rajesh Talreja ... Applicant

IN THE MATTER BETWEEN :-

Amit Gopi Makhija ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Sumeet Gemnani i/b. Mr. Satyan Pille, Advocate for the Applicant.

Mr. S. S. Pednekar, APP for the Respondent – State.

Mr. Charan Penthalia, Advocate for the applicant in Interim Application.

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CORAM : PRAKASH D. NAIK, J.

DATE : 30th MARCH, 2021

PER COURT:-

1. This is an application for anticipatory bail in C.R. No. I-56 of 2021 registered with Hill-Line Police Station for offences under

Sections 420 and 406 of Indian Penal Code (for short “IPC”).

2. The First Information Report (for short ‘FIR’) was registered on 11th March, 2021. The complainant has alleged that the applicant/accused had accepted the amount of Rs. 5,90,000/- towards booking of Maruti Ertiga Car. The booking was not done. When the complainant demanded the amount Rs.25,000/-, were transferred to the complainant by NEFT and the balance amount of Rs. 5,65,000/- was misappropriated.

3. Learned advocate for the applicant submits that the amount of Rs. 5,90,000/- was accepted by way of friendly loan and not towards booking of car. The entire amount was returned to the complainant. The amount of Rs.25,000/- was transferred by the applicant to the complainant on 4th February, 2020. This fact is suppressed by complainant. The balance amount was paid in cash. It is further submitted that there is no element of cheating in the transactions. Criminal proceedings should not be used for recovery of money. He relied upon the decision of the Supreme Court in the case of *Satishchandra Ratanlal Shah V/s. State of Gujarat and Another*, delivered in Criminal Appeal No. 9 of 2019. The applicant is willing to cooperate with the investigation. He would face the proceedings. He is willing to deposit the balance amount in the Court. The

applicant had handed over two cheques to the complainant which were still in his possession.

4. Learned APP submitted that the amount was accepted towards booking of car. The applicant has executed undertaking that he had decided to remit back the amount of Rs. 5,90,000/- for which he had issued cheques of Rs.3,00,000/- and Rs. 2,90,000/-. In the event the applicant returns the entire amount, the cheques could be handed over to him.

5. Learned counsel for the applicant however, disputed the undertaking. It is submitted that he has not executed such undertaking.

6. Learned counsel for the intervenor supports the submissions of learned APP. Reliance is placed on the undertaking. It is submitted that false claim is made by the applicant that the amount is returned by cash.

7. I have perused the FIR and other documents. There is no suppression of transfer of Rs.25,000/- by the complainant. The said fact is mentioned in the FIR. The contention of the applicant that entire amount is returned by cash is not supported by any evidence. The undertaking relied upon by the prosecution indicates that the applicant had agreed to remit the amount. Cheques are now in

possession of the complainant which are now handed over to the Investigation Officer for the purpose of Investigation. The applicant is not willing to accept the position that, in the event cheques were returned, he would remit the entire balance amount of Rs.5,65,000/- to the complainant. Considering the factual aspects, the contention of the applicant cannot be accepted. Hence, no case for grant of anticipatory bail is made out.

ORDER

- (i) Criminal Anticipatory Bail Application No. 870 of 2021 is rejected and disposed of accordingly.
- (ii) Interim Application No. 1168 of 2021 stands disposed of.

(PRAKASH D. NAIK, J.)