

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 ANTICIPATORY BAIL APPLICATION NO.310 OF 2022

MOHAMMAD FARID S/O MD. JAKERIYA
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Rahate Satyajeet J.
APP for Respondent-State : Mr. S. B. Narwade.
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CORAM : S. G. MEHARE, J.
DATE : 21.06.2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. Learned counsel for the applicant would submit that he has no concern with the alleged incident. The vehicle involved in the incident was sold by document dated 20.09.2021 to the co-accused, who was in possession of the contraband articles. The document of transfer was executed, and the forms of transfer have also been executed. However, the transfer documents have not been submitted to the Office of the Transport for appropriate transfer. But the fact remains that since September 2021, the vehicle involved in the incident has been exclusively in possession and under the ownership of the

co-accused. He has given the false answer in interrogation to the police that the applicant has a role to play in the alleged offence.

3. Learned APP has strongly opposed the application, contending that the so-called transaction is not a real transaction but a practice in committing such types of offences. He relied on a bunch of case laws as regards the applicability of Section 328 of the I.P.C. He has also pointed out that the transfer of the vehicle is not legal and authorized; therefore, the possession of the contraband should be assumed in the custody of the applicant.

4. Per contra, learned counsel for the applicant has also filed various judgments as regards the applicability of Section 328 of the I.P.C. There are judgments from both sides, and the issue as pointed out by the learned APP as regards the applicability of Section 328 of the I.P.C. is pending before the Apex Court. Be that as it may, here, the issue is different. The applicant had a specific case that the vehicle in which the contraband articles were transported was given in the possession of the co-accused in the year 2021 by document of sale. Since then, the applicant has no control over the said vehicle. The learned counsel for the applicant has made a

specific statement that the co-accused who was driving the vehicle involved in the crime was never his driver. But only to bring the applicant under the Criminal Law, he has been arraigned as an accused.

5. Apparently, it appears that the vehicle involved in the incident was given in possession of co-accused Akbar Khan Mehboob Khan on 20.09.2021. The vehicle was purchased by taking a loan from I.C.I.C.I. Bank. However, the bank appears to have not been intimated about the transaction. Therefore, the applicant has purchased the insurance policy and still paying the E.M.I.s. The learned counsel for the applicant had pointed out that the co-accused Akbar Khan is paying him the money by installment by depositing in his bank account. This Court is not hearing on the validity of the sale transaction of the vehicle involved in the crime, but has to consider the *prima facie* case. *Prima facie*, the applicant is able to satisfy the Court that on the day of the incident, he has no control and conscious possession over and of the vehicle involved in the incident. Such a balanced situation may help the applicant in getting protection. In the facts and circumstances of the case, the application deserves to be allowed. Hence, the following order :

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest of the applicant Mohammad Farid S/o Md. Jakeriya, in connection with Crime No.30 of 2022, registered with Police Station Parbhani Rural, District Parbhani for the offences punishable under Sections 328, 188, 271, 273 read with Section 34 of I.P.C., be released on bail on furnishing P.B. and S.B. of Rs.20,000/- (Rupees Twenty Thousand only) with one solvent surety of the like amount on the conditions that he shall attend the Police Station on every Thursday between 11.00 a.m. to 1.00 p.m. till 25.07.2022. He shall not tamper with the prosecution witnesses.
- (iii) *Humdast* allowed.

(S. G. MEHARE, J.)

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vmk/-