

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.690 OF 2022

Tanaji D. Yajgar ...Applicant
V/s.
The State of Maharashtra & anr. ...Respondents.

WITH

INTERIM APPLICATION (ST) NO. 19162 of 2022

None present for the Applicant.
Ms P.P. Shinde, APP for the Respondent/ State.
Mr. Aditya Andhorikar for Respondent No.2.

CORAM : N.R. BORKAR, J.
DATE : 18.11.2022.

P.C. :

1. None present for the Applicant.
2. This Court (CORAM : C.V. BHADANG, J.) by order dated 15 March 2022 passed the following order:

“ The Applicant, apprehending arrest, in connection with investigation of Crime No.96/2022 of Police Station Mohol, Solapur (Rural), under Section 420 of IPC, is seeking anticipatory bail.

2. The aforesaid crime is registered on the basis of the complaint dated 2 February 2022 lodged by Adesh Arjun Jagtap on behalf of Mannapuram Finance. The allegation is that, the Applicant has obtained a vehicle loan for purchase of a truck for business purpose and had failed to pay two Equated Monthly Installments (EMIs).

3. Heard the learned counsel for the parties. Perused record.

4. *The learned counsel for the Applicant submitted that the Applicant has paid five installments. However, subsequently, the truck is stolen for which a complaint is lodged. Reliance is placed on the decision of the Supreme Court in Satishchandra Ratanlal Shah Vs. State of Gujarat and Anr.¹ in order to submit that the inability of the Appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown since inception. The learned counsel for the Applicant submitted that the payment of the five installments shows that there is no such intention since inception. He sought leave to add the informant as a party Respondent. The learned counsel, on instructions, states that the Applicant is ready and willing to pay the EMIs.*

5. *The statement so made is accepted.*

6. *Hence the following order is passed.*

ORDER

1. *Leave granted to the Applicant to join the Informant / Mannapuram Finance, as a party Respondent. Necessary amendment to be carried out within three days.*

2. *Issue notice to the newly added Respondent returnable on 12 April 2022.*

3. *Private notice is allowed, in addition to the regular mode.*

4. *In the event of his arrest, in connection with investigation of Crime No.96/2022 of Police Station Mohol, Solapur (Rural), the Applicant Tanaji Dattu Yajgar, be released on bail on executing a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties, in the like amount.*

5. *This shall be further subject to the condition that the Applicant cooperates with the Investigating Agency*

1 (2019) 9 SCC 148

and deposits the two EMIs which are in arrears, by next date.

6. This order shall remain in force till next date."

3. The interim anticipatory bail was granted to the applicant subject to deposit of two EMIs. As the said deposit was not made, this Court (CORAM : Smt. Anuja Prabhudessai, J.) on 22 August 2022, passed the following order:

"1. By order dated 15/03/2022, this Court had granted pre-arrest bail to the Applicant and one of the conditions of interim bail was that the Applicant would deposit two EMIs/arrears by the next date.

2. It is seen that the matter had appeared on board on 12/04/2022, 20/06/2022 and 25/07/2022. Till date, the Applicant has not complied with the said condition. Learned counsel for the Applicant does not dispute the said facts. In fact, learned counsel for the Applicant is seeking to justify non deposit of the EMIs/arrears and has insinuated that the Court could not have imposed such condition in view of transfer of the vehicle. It is pertinent to note that the Applicant had not sought to modify the condition, but has been enjoying interim bail without complying with bail condition.

3. Considering the conduct of the Applicant, I am not inclined to continue the interim relief. Hence, interim relief is vacated. Stand over to 05/09/2022.

4. Leave is granted to Respondent No.2 to file reply within a period of two weeks with copy to the other side."

4. Thereafter, the matter was listed on 23 September 2022,

and on that day this Court (CORAM: NITIN W. SAMBRE,J.) passed the following order.

1] Applicant is seeking pre-arrest bail in C.R. No.96 of 2022 registered with Mohol Police Station dated 2/2/2022 for the offence punishable under Section 420 of the Indian Penal Code.

2] Complainant Aadesh Jagtap who claimed to be the owner of heavy vehicle bearing Registration No.MH-12-FZ-4982 which was on finance from private Finance Company viz Manappuram Finance, allegedly sold the same to the Applicant on 15/7/2021 by executing notarized agreement. Alleging that Applicant has not deposited loan installment for a period of two months i.e. December, 2022 and January 2022, complaint came to be lodged, resulting into registration of the offence.

3] Contentions of the Counsel for the Applicant are, in addition to aforesaid sale in favour of the Applicant which was effected on 15/7/2021, same was sold by the complainant to Somnath Kale on 05/10/2021. According to him, once the custody of the vehicle is taken by the Complainant from the Applicant and handed over to Somnath Kale, contractual obligation, if any, between the Applicant and Complainant can be enforced through civil dispute. He would urge that vehicle was removed from the custody of the Applicant which has resulted into Applicant having lodged complaint on 9/1/2022, 9/10/2021, stating therein that truck in question has been stolen from the custody of the Applicant. He would urge that the said issue is not investigated into.

4] While countering the said submissions, learned APP would urge that custodial interrogation of the Applicant is necessary as he has failed to deposit two installments.

5] I have appreciated said submissions.

6] It appears that at the behest of the Applicant offence being C.R. No.243 of 2022 punishable under Section 379 of IPC came to be registered with Naldurg

Police Station, investigation of which is not brought on record by the Investigating Officer. Apart from above, so as to find out truth in the matter, this Court found it necessary to implead complainant to the present Application.

7] In this backdrop, it will be appropriate to direct Respondent No.2 - complainant to file reply to the present Application within a period of two weeks from today.

8] Let the ad-interim order to continue until further orders.

9] Stand over to 21 st October, 2022.”

5. It appears that on 23 September 2022 it was not pointed out to this Court that interim order is already vacated by order dated 22 August 2022 and interim order which was not in existence got continued. Be that as it may, the perusal of order dated 22 August 2022 passed by this Court would show that the applicant tried to justify non-deposit of EMIs and according to the applicant, the Court could not have imposed such condition. Considering the overall facts and circumstances, I am therefore not inclined to entertain the present application. Accordingly, the Application is rejected.

6. Interim Application (St) No. 19162 of 2022 for intervention is not on board. Taken on board.

7. In view of disposal of bail application, the Intervention Application does not survive and the same is disposed of.

[N.R.BORKAR, J.]