

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

ANTICIPATORY BAIL APPLICATION NO.873 OF 2022

Abdul Asif Kadar

...Applicant

Versus

The State of Maharashtra

...Respondent

....

Mr. Milan Desai i/b. Mr. T.R. Patel for the Applicant.

Mr. S.H. Yadav, APP for Respondent-State.

Mr. Prashant Pandey with Mr. Darshit Jain for the Intervenor.

Mr. M.R. Phad, I.O., Malad police station, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 31st MARCH, 2022.

P.C.:-

1. At the outset, learned counsel for the Applicant seeks leave to implead the Complainant as party Respondent No.2. Leave is granted. Cause title be amended forthwith. Mr. Prashant Pandey, learned counsel waives service on behalf of Respondent No.2.

2. This is an application under Section 438 of the Cr.P.C. filed by the Applicant apprehending his arrest in Crime No.21 of 2022 registered with Malad Police Station, Mumbai for offences punishable under Sections 406 and 420 r/w 34 of the IPC.

3. Heard Mr. Milan Desai, learned counsel for the Applicant, Mr. Prashant Pandey, learned counsel for the Intervenor and Mr. S.H. Yadav,

learned APP for Respondent-State. Perused the records and considered the submissions advanced by the learned counsel for the respective parties.

4. The aforesaid crime was registered pursuant to the FIR lodged by Mr. Chanchal Rastogi against the Applicant and his son, who are in business of selling used/second hand cars in the name of M/s. Linkway Motors. A perusal of the FIR reveals that in the month of June-2018 the Complainant had approached the Applicant and his son and has expressed his desire to purchase a Mercedes Benz car, which was in good condition with no history of accident. The Applicant and his son showed him a car, which was available for sale. Upon negotiation, the price was settled at Rs.45,51,000/-.

5. The Complainant claims that the Applicant assured him that the vehicle was in good condition and had no accident history. Relying upon the said assurance the Complainant paid Rs.45,58,000/- and took possession of the Car in July -2018. Subsequently in August-2018 he took the vehicle to Auto Hanger of authorised Mercedes Benz dealer for fitness report. On receipt of the report he realised that the said car had met with an accident in the year 2017. The Complainant handed over keys of the car to the Applicant and returned the car and demanded refund of money.

The Complainant claims that the Applicant had assured to refund the money after selling the said car. The Applicant and his son did not return the money despite assurance.

6. The Applicant is only a dealer in selling of second hand cars. The Complainant purchased from the Applicant a second hand Mercedes Benz Car on payment of Rs.44,50,000/-. He accepted delivery of the vehicle without getting it inspected from an authorised dealer and signed a delivery note endorsing that the vehicle is duly approved by him and is as per his satisfaction. There is also a duly signed handwritten endorsement on the delivery note, that he is responsible for accident and meter tampering. The Complainant subsequently took the vehicle to the authorised dealer for inspection and learnt that the vehicle was involved in an accident. He returned the vehicle to the Applicant with demand of refund of money and filed the FIR in view of failure to refund the money.

7. The FIR does not indicate that as on the date of the sale the Applicant was aware that the car had met with an accident and that despite the knowledge the Applicant had intentionally induced the Complainant in purchasing the said Car. The contents of the FIR even if taken at its face value prima facie do not constitute an offence of cheating

and misappropriation.

8. The records reveal that vide notice dated 05/10/2020 the Applicant had called upon the Complainant to pay parking and maintenance charges. The Applicant had claimed that the Complainant had kept the car for display and sale, but he was not ready to accept the depreciated price. Whereas in the reply to the said notice the Complainant had alleged that the Applicant took back the car with an assurance to refund the money. Though it is now sought to be contended that the handwritten endorsement and signature on the delivery note is forged and fabricated no such allegations were made in the reply dated 07/10/2020. Hence, prima facie there is no misrepresentation. The material on record does not prima facie indicate element of deception or inducement, which are essential ingredients of 'cheating'. Hence, this is not a case which warrants custodial interrogation.

9. It is also to be noted that the vehicle was returned to the Applicant in the year 2018. The intention of the Applicant not to refund the money, for whatsoever reasons, was known to the Complainant in the year 2020. despite which the complaint is lodged in the year 2022. There is considerable delay in lodging the complainant and this fact

would also justify grant of pre-arrest bail.

10. Hence, the application is allowed on following terms and conditions:

- (i) In the event of arrest of the Applicant in Crime No.21 of 2022 registered with Malad Police Station, Mumbai, the Applicant shall be released on bail executing PR bonds in the sum of Rs.25,000/- with one or two surety to the like amount;
- (ii) The Applicant shall report to the Investigating Officer for a period of four days from 04/04/2022 between 11.00 a.m. to 2.00 p.m. and thereafter as and when called by the Investigating Officer;
- (iii) The Applicant shall keep the Investigating Officer informed of his current address and mobile contact number, and /or change of residence or mobile details, if any from time to time.

11. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)