

Diksha Rane

Digitally
signed by
DIKSHA
DINESH
RANE
Date:
2022.11.22
18:43:10
+0530

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

ANTICIPATORY BAIL APPLICATION NO.1725 OF 2022

TUSHAR JAYWANT TAMBE ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
INTERIM APPLICATION NO.2370 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.1725 OF 2022**

M/S. AHER AUTO PRIME LLP
THROUGH NARENDRA SHAMLAL PATHAK ..APPLICANT
VS.
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Mr. Prashant Thombre for the applicant.
Mr. S. H. Yadav, APP for State.
Mr. Deepak Sarode, API, Mahatma Phule Chowk Police
Station.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 22, 2022.

P.C. :

1. For the reasons mentioned in the interim application
for intervention, the interim application is allowed.

ANTICIPATORY BAIL APPLICATION NO.1725 OF 2022

2. Heard learned counsel for the applicant, learned APP and learned counsel for the complainant.

3. The offence registered against the applicant is under Sections 409, 420 read with 34 of the Indian Penal Code (hereafter 'IPC' for short) in respect of the C.R.No.0277 of 2022 registered with Mahatma Phule Chowk Police Station. The General Manager of 'Aher Auto Prime L.L.P.' filed the First Information Report (FIR). The applicant at the relevant time was working as a Manager with 'Maruti True Value Section'. The applicant was authorized to fix purchase price of second hand vehicles and to fix price of resale. He was assisted by Mrs. Sejal Chalke and Mr. Sumit Jadhav, who were working in the said Section. In the month of March, 2022, it was noticed that 22 vehicles were sold but the amounts in respect of the sale were not credited to the company. It is alleged that the consideration of the sale was received by the applicant who was working in the connivance with the two employees. The applicant is alleged to be the mastermind who shared the misappropriated

amount with these two employees. The employees Mrs. Sejal Chalke and Mr. Sumit Jadhav were released on regular bail.

4. I have gone through the orders passed by this court. It is admitted position that the applicant was working as a Manager with 'Maruti True Value Section', who was authorized to fix purchase price of second hand vehicles and to fix price of resale. The allegation is of misappropriation.

5. Learned counsel for the complainant submitted that apart from the offence in respect of 15 vehicles, it was later noticed that the applicant was involved in various illegal activities in respect of dealings with the vehicles.

6. *Prima facie*, in my opinion, the applicant being Manager of the company, the provisions of Section 409 of the IPC may not be attracted. This observation is made without prejudice to the complainants and prosecution version that the present case is covered by Section 409 of the IPC. Learned APP and the counsel for the informant submitted that in any case the provisions of Sections 406 and 408 of the IPC will be attracted in the present case.

7. I find that the offence under Sections 406 and 408 of the IPC is punishable with the term which may extend to three (3) years and seven (7) years respectively. During the course of the hearing of this application, on earlier occasions, this Court had called upon the applicant to justify the sources of the excess amount which is found in his account which the investigating agency alleges to be the misappropriated amount. The Investigating Officer may consider the explanation which the applicant may furnish during the course of the investigation in support of his case. Considering the earlier orders passed by this Court, it would be appropriate in the peculiar facts of this case, if the Investigating Officer is to issue a notice under Section 41A of the Code of Criminal Procedure (hereafter 'the Cr.PC' for short) and follow the procedure as prescribed by the standing order of the Director General, State of Maharashtra, bearing No.3 of 2022, dated July 20, 2022.

8. After following the procedure prescribed under Section 41A of the Cr.PC, if the Investigating Officer wants to arrest the applicant, he shall give 72 hours notice in advance to

the applicant-Tushar Jaywant Tambe.

9. In this view of the matter, nothing survives for consideration in the anticipatory bail application. The same is disposed of.

(M. S. KARNIK, J.)