

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

ANTICIPATORY BAIL APPLICATION NO.62 OF 2024

Azar Yunus @ Yusuf Maniyar

...Applicant

versus

The State of Maharashtra

.... Respondent

NIKITA
KAILAS
DARADE
Digitally signed by
NIKITA KAILAS
DARADE
Date: 2024.01.16
11:57:24 +0530

WITH

ANTICIPATORY BAIL APPLICATION NO.64 OF 2024

1) Jahir Ibrahim Shaikh &

2) Javed Hasan Sayyad

...Applicants

versus

The State of Maharashtra

.... Respondent

Mr. Jayendra D. Khairnar (appeared through V.C.) a/w Mufeez Ansari for the Applicant in both ABA's.

Ms. Pallavi N. Dabholkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 12th JANUARY 2024

P.C. :

1. Both the applications are decided by this common order because they arise out of same C.R.No.426 of 2023, registered at Bhadrakali Police Station, Nashik.
2. The Applicants are seeking anticipatory bail in connection with C.R. No.426 of 2023, under Sections 420,406,504,506 read

with 34 of IPC. The offence is registered on 21st December 2023.

3. Heard Mr. Jayendra Khairnar, learned counsel for the Applicants and Ms. Pallavi Dabholkar, learned APP for the State.
4. The FIR is lodged by Krushna Vargane, who has stated that he was in the business of transport. He was having partner Dilipkumar Khivsara. They wanted ten vehicles for their business. They were in search of old vehicles. One Abed Khan showed his willingness to procure those vehicles. Therefore, the informant and Abed Khan came to Nashik on 18th July 2023. Abed Khan introduced the informant with the Applicants Azar Maniyar, Jahir Ibrahim Shaikh, Javed Sayyed and one more accused. All of them took the informant to Ozar and showed him a vehicle bearing No.MH 15 GV 6674. They showed RC book mentioning hypothecation of the vehicle with a Finance Company. They represented to the informant that the outstanding loan was already cleared and the relevant documents would be available within eight to ten days. It was told to the informant that the vehicle would be transferred in his name. The transaction was fixed at Rs. 9,01,000/-. The

documents was executed by the Applicant Azar Maniyar in favour of the informant. The others signed the documents as the witnesses. The informant transferred Rs.6,50,000/- in the account of Azar Maniyar, and he also paid Rs.50,000/- by way of insurance. The informant then took the vehicle to Newasa MIDC.

5. On 11th August 2023 all four persons including these three Applicants met the informant at Takli and showed him the documents in respect of a vehicle bearing No.MH 15 JC 0390. The informant decided to purchase that vehicle for Rs.13,31,000/-. Even on that vehicle, there was hypothecation mentioned. Similar representation was made that the loan was cleared and the documents would be available within eight days. The document was executed. It was a notarized document for that transaction. The informant transferred Rs.5,00,000/- in favour of the Applicant Azar Maniyar and he paid Rs.4,00,000/- in cash and Rs.50,000/- by R.T.G.S.. According to him, he paid Rs.17,80,000/-. The informant was using those vehicles. Out of them, one of the vehicles bearing No.MH 15 GV 6674 was

intercepted and seized by the Finance Company i.e. Choramandalam Mutual Finance Company Ahmednagar.

6. Subsequently, the informant was refunded Rs.7,00,000/- by the accused and, therefore, he returned the vehicle bearing No.MH 15 JC 0390.
7. Hence, he had suffered loss of Rs.11,80,000/-. That amount was not refunded and the vehicle bearing No.MH 15 GV 6674 was taken by the Finance Company. On this basis the FIR is lodged.
8. Learned counsel for the Applicants submitted that the Applicants were in the business of sale of old vehicles. There was reference to only two vehicles but transaction was in respect of three vehicles. The said facts are suppressed in the FIR. He submitted that one of the vehicles is taken back by the Finance Company and, therefore, the accused are not in a position to return that vehicle. He submitted that they are willing to refund the amount of Rs.11,80,000/-.
9. Learned APP, opposed these submissions. According to her, a false representation was made to the informant. The accused are

not serious in the statement that they would refund the said amount. The vehicles were sold in August 2023. False representation was made to the first informant.

10. Learned APP pointed out that the Applicants' anticipatory bail application was pending before the Sessions Court and before this Court as well. But the Applicants have not shown any inclination to refund the amount and they are just buying time. This should not be permitted.
11. I have considered these submissions. From the FIR, it is quite clear that the informant was induced and misled into purchasing those vehicles. The loan taken on those vehicles was not repaid and false representation was made. The informant does not have the vehicles and he has lost Rs.11,80,000/-. Therefore, from the FIR, it is quite clear that the offence is made out.
12. As far as the Applicants Zahir Shaikh and Javed Sayyad are concerned, even as per the FIR, the money is not received by them. The money was paid only to the Applicant Azar Maniyar. Therefore, the role of these two Applicants is lesser than the role played by the Azar Maniyar. The money has gone only to the

accused/Applicant Azar Maniyar.

13. Learned APP, on instructions of the Investigating Officer, states that the Applicants Jahir, and Javed have not played the main role. The money was given only to Azar Maniyar. Therefore, I am inclined to grant relief to the accused Jahir and Javed. But since the offence is made out and the money was misappropriated by the Applicant Azar Maniyar, his custodial interrogation is necessary.

14.Hence, the following order :

ORDER

- (i) The Anticipatory Bail Application No.62 of 2024, preferred by the Applicant Azar Yunus @ Yusuf Maniyar is rejected.
- (ii) The Anticipatory Bail Application preferred by the Applicants Jahir Ibrahim Shaikh and Javed Hasan Sayyad is allowed. In the event of their arrest in connection with C.R.No.426 of 2023 registered at Bhadrakali Police Station, Nashik, these Applicants are directed to be released on bail on their executing PR bond in the sum of Rs.30,000/- (Rs.Thirty Thousand Only) each with one or two sureties each in the like amount.

- (iii) The Applicants shall co-operate with the investigation.
- (iv) Both the Anticipatory Bail Applications stands disposed of accordingly.

(SARANG V. KOTWAL, J.)