

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

ANTICIPATORY BAIL APPLICATION NO.1093 OF 2024

1. Vishal Dnyaneshwar Mhaskar, &
2. Somnath Karbhari Sanap. Applicants
Versus
The State of Maharashtra Respondent

Mr. Aniket Vagal, Advocate a/w Divesh Mehani, Savvy
Kolhekar, Kunal N. Pednekar for the Applicants.
Ms. Rajeshree V. Newton, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 22nd APRIL, 2024

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.46/2024 registered at Sarkar Wada Police Station, Nashik City on 6.2.2024 under sections 406 and 420 of IPC.

2. Heard Mr. Aniket Vagal, learned counsel for the Applicants and Ms. Rajeshree Newton, learned APP for the Respondent-State.

3. The FIR is lodged by one Pandurang Waksare. He has stated that he had purchased a Maruti Suzuki Swift Dzire Car of the 2022 model. Subsequently, he was in a weak financial condition and, therefore, he decided to sell that car. The Applicant No.2 Somnath Sanap introduced the Applicant No.1 Vishal Mhaskar as a prospective purchaser. The informant decided to sell that car to the Applicant No.1 Vishal. He has stated that as a consideration, the Applicant No.1 gave three cheques of the amounts of Rs.1 Lakh, Rs.1 Lakh and 80,000/- respectively drawn on Punjab National Bank. One more cheque to the tune of Rs.6,27,150/- was given, which was kept with the informant till the installments of the loan taken on the car was fully repaid. The informant had deposited those cheques. They were dishonored. The informant approached the accused. However, they told him that he would neither get the money nor would he get back the car. The informant sent a notice to the address mentioned in the MOU, however, that notice was returned with the endorsement that the Applicant No.1 was not residing on that address. Thus, the informant

realized that he was cheated and, therefore, he lodged this FIR. There was a reference that the Applicant No.1 had paid Rs.90,000/- through the account of the Applicant No.2's wife to the present informant.

4. Learned counsel for the Applicants submitted that the Applicant No.2 had merely introduced the Applicant No.1 to the informant. He had not played any actual role in that transaction. He submitted that since the informant was raising a grievance against the Applicant No.2 as well, the Applicant No.2 had paid Rs.90,000/- to the informant, but, that would not mean that the Applicant No.2 had committed any offence.

5. As far as the Applicant No.1 is concerned, learned counsel submitted that the FIR does not mention that the car was handed over to him. He submitted that the informant had taken recourse to initiate proceedings under Section 138 of the Negotiable Instruments Act and, therefore, on the same set of allegations he could not have lodged the present FIR.

6. Learned counsel further submitted that the Applicants have not committed any offence. The car is already with the Finance Company. The Applicants are willing to cooperate with the investigation. Their custodial interrogation is not necessary.

7. Learned APP produced the investigation papers before me. Learned APP submitted that Applicant No.1 used the car without making any payment. He gave false address in the memorandum of understanding and he had also furnished false address before the Court of Session while preferring an application for anticipatory bail. Therefore, the Applicant No.1 does not deserve any leniency or protection considering his past conduct. He has used the informant's vehicle without making any payment. The representations and inducement were all false.

8. I have considered these submissions. I have also perused the investigation papers produced before me. The memorandum of understanding mentions a particular address of the Applicant No.1. The address in that is Flat No.3,

Chandra Apartment, Indra Nagar, Kamtewadi Road, Trimurti Chowk, Nashik. The investigating agency has recorded the statements of the tenant of the flat namely Bhalchandra Raje. He has categorically stated that the Applicant No.1 had never stayed in that flat. This particular witness Bhalchandra Raje was residing in that flat since January, 2022. There is a statement of the flat owner Rajeshree Mate. She has also stated that the Applicant No.1 had never resided in that flat. This clearly shows that the Applicant No.1 was dishonest right from the inception. He had given false address. He had taken the vehicle. The MOU itself mentions that the vehicle was handed over to the Applicant No.1 at the time of executing that MOU on 30.1.2023. Thereafter the Applicant No.1 was using that vehicle without making any payment whatsoever to the informant till it was seized by the finance company. The investigating officer informs the Court that as of today the vehicle is in the custody of Mahindra Finance.

9. Learned counsel for the Applicants submitted that the informant's role is also suspicious as he should not have

sold the car when the loan was pending. In that view, the conduct of the informant is another subject matter. The fact remains that the informant was cheated by the Applicant No.1.

10. The offence under Section 420 of IPC is clearly made out against the Applicant No.1. His custodial interrogation is necessary to find out his *modus operandi*. Apart from that, even the manner in which the offence is committed will have to be taken into consideration while deciding this application for anticipatory bail. On both these counts, I am not inclined to grant relief to the Applicant No.1.

11. As far as the Applicant No.2 is concerned, his role is comparatively minor. He had brought about the transaction between the informant and the Applicant No.1 and he had also paid Rs.90,000/- to the informant. To that extent, because of his conduct the Applicant No.2 can be protected under Section 438 of Cr.P.C.

12. Hence the following order :

ORDER

- (i) The Application on behalf of the Applicant No.1 Vishal Dnyaneshwar Mhaskar is rejected.
- (ii) In the event of his arrest in connection with C.R.No.46/2024 registered at Sarkar Wada Police Station, Nashik City, the Applicant No.2 Somnath Karbhari Sanap is directed to be released on bail on his furnishing a PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (iii) Anticipatory Bail Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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by
PRADIPKUMAR
PRAKASHRAO
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