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

**ANTICIPATORY BAIL APPLICATION NO.1315 OF 2024**

Ashwin Amritlal Jain ..Applicant
Versus
The State of Maharashtra ..Respondents

Mr. Ghanshyam Upadhyay a/w. Mr. Vijay Jha and Mr. Ankit Upadhyay i/b. Law Juris for Applicant.
Ms. Pallavi D. Dabholkar, APP for State/Respondent.

**CORAM :- SARANG V. KOTWAL, J.**
**DATE :- 09 MAY 2024**

**P.C.** :-

1. This is the second time when the applicant has approached this Court for anticipatory bail in connection with C.R. No.770 of 2023 registered with RCF Police Station, Mumbai on 31/12/2023 under sections 406, 420 of IPC and sections 43, 44, 45, 46 of the Maharashtra Money Lenders (Regulations) Act 2014.

2. On the previous occasion, after arguments of both the sides a detailed reasoned order was passed on 5$^{th}$ March 2024 in Anticipatory Bail Application No.614 of 2024 rejecting that Anticipatory Bail Application. Now again this second Anticipatory

Bail Application is preferred by the applicant on the ground that certain representations made before the Court by the investigating agency are not factually correct. Therefore, this application is maintainable. To understand the applicant's contention about factual misrepresentation by the Investigating Agency before the Court, it is necessary to reproduce the Order dated 5th March 2024 in this Order.

> 1. The Applicant is seeking anticipatory bail in connection with C.R.No.770 of 2023 registered at R.C.F. Police Station, Mumbai, on 31.12.2023, under Sections 406 and 420 of the Indian Penal Code and under Sections 43, 44, 45 and 46 of The Maharashtra Money-Lending (Regulation) Act, 2014.
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> 2. Heard Mr. Subhash Jha, learned counsel for the applicant and Ms. Pallavi Dabholkar, learned APP for the State.
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> 3. The F.I.R. is lodged by one Manjit Singh on 31.12.2023. He has stated that, he was residing at Taloja, Navi Mumbai. He has a business of supplying electronic goods, at Navi Mumbai. In 2018, he had purchased a Tata company's vehicle. It's registration number is MH46-BE-7555. In January 2020, he was suffering financially in his business. He needed money. He

requested for loan from his sister Sarabjit. At that time, her husband told him that the present applicant was lending money on interest, in Vashi Naka, Chembur area. The informant decided to obtain loan from the present applicant. On 16.01.2020, the informant along with his brother in law Jaspal came to the shop of the present applicant. The informant requested loan of Rs. 1 lakh. The applicant told him that, he would give loan at the rate of 10% interest, but for that purpose the informant would have to mortgage some article. Since the informant was in need of money, he mortgaged his aforementioned car with the applicant. The informant gave him one key, for which, the applicant gave him Rs.50000/-. On 18.01.2020, the informant gave him the other key. At that time, the applicant gave him Rs.50000/- more; out of which, the informant returned Rs.20000/-. He took away Rs.30000/-. Thereafter, when he got some money, he returned Rs.15000/- on 25.02.2020 and Rs.25000/- were paid on the applicant's wife's account on 29.02.2020. Thus, the informant had paid Rs.40000/-. After that, lock-down was imposed and, therefore, the informant could not return the other amount to the applicant.

4. In June 2020, he approached the applicant and requested him to return his vehicle. At that time, the applicant told him that the vehicle was outside Mumbai. On 26.08.2023 when the informant had gone to Mumbra for some work, he saw his vehicle at *shil-phata* toll plaza. At that time, the informant called the applicant and asked about it. The applicant did not give satisfactory answers. The informant thereafter regularly requested the applicant to take back

his amount and return his vehicle. However, the applicant was refusing his requests. In 2021, the informant kept receiving the messages on his mobile phone regarding deduction of toll. The informant went to Vashi Naka toll plaza and checked the CCTV footage. He saw his car, however, the registration number was changed. The number was mentioned as MH03-DA-7252. The informant again questioned the applicant. At that time, the applicant told the informant that, he had sold that vehicle. He told him that the informant had to pay dues of Rs.3,20,000/- and if that amount was returned the informant would get back his vehicle. The informant requested him to return the vehicle after settling the accounts, but the vehicle was not returned. Thus, according to the informant, the applicant had taken away his vehicle worth Rs.15 lakhs bearing No. MH46-BE-7555 and thus committed the offence. Based on these allegations the F.I.R. was lodged.

5. Learned APP submitted that, during the investigation, Section 467 of the I.P.C. is now applied.

6. Learned counsel for the applicant made the following submissions:

The applicant has a money lending licence, therefore, he had legitimately given Rs.1 lakh by way of loan to the informant. Out of which, the informant had returned only Rs.40000/-. The applicant had taken the vehicle by way of mortgage as a security for the loan advanced to the informant. Therefore, according to Mr. Jha, the applicant was well within his rights to sell that vehicle if that loan and the interest were not repaid by the informant. He further submitted that the car was given by the applicant to one Bhanushali, who in turn, had got the documents executed and, therefore, if there is a forgery of any document, then, only Bhanushali can be held responsible. Mr. Jha submitted that Bhanushali is not made an accused. Bhanushali is the beneficiary in this offence. There is no material on record to show that the applicant himself had committed this forgery. The applicant has nothing to do with the forgery. He submitted that, Section 467 of the I.P.C. is not attracted because there is no forgery of any valuable security; as defined U/s.30 of the I.P.C. At the highest, it can be said that said Bhanushali may have committed the offence. The present applicant has nothing to do with Bhanushali who could have committed that offence. Therefore, custodial interrogation of the applicant is not necessary. He further submitted that, within a short span of time, the same police officer has been registering one offence after another against the present applicant. It is quite clear that, all these offences are registered with a malafide intention and it is causing sheer harassment to the present applicant. It is nothing but extortion on the part of the police officers. The said transaction had taken place in the year 2020 and the F.I.R. is lodged on 31.12.2023. Thus, there is unexplained and unreasonable delay in lodging the F.I.R. He further submitted that the applicant is innocent in other offences, as well and yet, he has been implicated in all these offences one after the other.

7. Learned APP opposed these submissions. She produced the investigation papers before me. There are certain documents collected

during the investigation which purportedly bear signatures of the first informant. However, the investigation has revealed that those signatures are forged. She further relied on the letters sent by the R.T.O. office mentioning that the smart card in respect of the vehicle number MH46-BE-7555 was not issued by their office. She also relied on the transfer form purportedly bearing signature of the first informant. She, therefore, submitted that the offence is clearly made out. The vehicle has gone from the applicant to Bhanushali and after that it was fraudulently transferred in the name of Bhanushali based on the forged signatures. She submitted that the offence U/s.467 of the I.P.C. is made out because section 30 of the I.P.C. is attracted in the present case which defines forgery of ‘valuable security’.

8. I have considered these submissions. The important documents which the learned APP has relied on are in respect of one declaration purportedly signed by the present informant. That document is in the nature of declaration that he was selling that particular car bearing No.MH46-BE-7555 to the present applicant for Rs.3,50,000/-. By the same declaration, he had undertaken to pay the E.M.I. in respect of the loan taken on that vehicle from a bank and that he was taking responsibility of getting the N.O.C. from the bank; to be handed over to the present applicant. The investigation has revealed that this declaration purportedly signed by the informant is forged; it does not bear the real signature of the informant.

9. Learned APP, thereafter, relied on the letter dated 24.01.2024 along with a smart card in respect of registration of the vehicle bearing

No.MH46-BE-7555. The Assistant R.T.O. Panvel, through this letter had informed the Assistant Police Inspector, R.C.F. police station that the said smart card was not issued by their office.

10. Learned APP also relied on the Form No.29 purportedly transferring the ownership from the informant to Jayesh Bhanushali. Again on this transfer form, the informant's signatures are forged.

11. Section 30 of the I.P.C. reads thus:

"**30. "Valuable security" –** The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right."

12. Section 467 of the I.P.C. reads thus:

"**Section 467 - Forgery of valuable security, will, etc -** Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquaintance or receipt acknowledging the payment of money, or an acquaintance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

13. Thus, reading both these sections it is clear that the smart card which is in the nature of registration of the vehicle will be covered under the definition of ‘valuable security’, because that document creates a legal right purportedly in favour of Bhanushali. Since it is a valuable document, Section 467 of the I.P.C. will be attracted.

14. As far as, Shri. Jha’s contention that the applicant is falsely implicated in this case by the same police officer is concerned, I am restricting my observations to the facts of the present case in which the applicant’s role is clearly made out. He had given that particular vehicle to Bhanushali and thereafter it was transferred in Bhanushali’s name. The Applicant had taken that car from the informant. Moreover, during investigation, the investigating agency has recovered the aforementioned declaration purportedly signed by the informant; which is also a forged document. Therefore, even if there are other offences and the applicant’s involvement may or may not be there in those offences, as far as, the present offence is concerned his involvement is clearly seen. A smart card of R.T.O. is forged. The offence is serious and grave. The applicant’s custodial interrogation is necessary. I do not find any merit in the application.

15. The application is rejected.

16. At this stage, Shri. Jha asked for extension of interim protection. In the present case, there was no interim protection granted by this court. Therefore, I am not inclined to grant any interim protection to the applicant.

3. Learned counsel for applicant submitted that there is factual misrepresentation by the Investigating Agency in paragraph Nos.7, 10, 13 and 14.

4. According to Mr. Upadhyay, who appeared for the Applicant today, the car was never transferred in the name of Jayesh Bhanushali and therefore basic premise of the prosecution case is false. If the car is not transferred, there is no question of forged documents being used. He submitted that unless the forged documents are actually used to cause wrongful loss to the victim, no offence is made out. In this case the car was not actually transferred in the R.T.O. record. These allegedly forged documents were not used by the offenders. No offence is made out. Applicant deserves protection. Mr. Upadhyay further submitted that the smart card is not issued by the R.T.O. in the name of Jayesh, and it is still in the name of the first informant.

5. In that connection the learned APP again produced those documents which are as follows :

(i) The letter dated 24th January 2024 by R.T.O. wherein it is mentioned that the smart card No. MH9743868 in respect of vehicle No. MH46BE7555 was not issued by R.T.O.

(ii) There is Form No.28 purportedly signed by the informant expressing his intention to sell the vehicle to Jayesh Bhanushali, which is a forged document according to the prosecution.

(iii) Form No.29 is similarly a forged document.

(iv) Form No.30 is also a forged document.

(v) There is one declaration which allegedly bears forged signature of the informant.

6. Apart from that, the statements of Jayesh Bhanushali recorded on 1st January 2024 and 4th January 2024 are important. In both these statements he has stated that in May 2020 the applicant approached him and told him that the applicant had given loan to the informant and the applicant had taken the informant's car bearing No. MH46BE7555. The informant was not

returning the interest amount on his money therefore he wanted to sell the car. On 20th May 2020 Jayesh Bhanushali purchased that car from the applicant for Rs.4,50,000/-. He had paid that amount to the applicant between July 2020 up to August 2022. The car was in the name of the informant and it could not be transferred in Jayesh Bhanushali's name. He informed the applicant about it. The applicant had promised that he would transfer the car in his name after the loan was repaid in respect of the car. It is specifically mentioned that the applicant had given certain documents to Jayesh Bhanushali. They were T.T.O. papers, sale agreement, declaration and R.C. Book No.MH9743868. Jayesh was knowing the applicant and therefore he purchased the car from him and sent that car to Gujarat. He thereafter produced that car before the police on 4th January 2024. At that time he also produced the above mentioned Form No.28. There were two copies bearing his name and the informant's name. There was Form No.29 which also bears the purported signature of the informant. There was blank receipt purportedly signed by the informant and form No.30 bearing purported signature of the informant. There was an R.C.

Book, photo copy of blank sale agreement bearing purported signature of the informant. All those documents were produced by Jayesh Bhanushali.

7. All this shows that those forged documents were actually used in this transaction and therefore the offence is complete. Rest of the reasons in the Order dated 5th March 2023 are still applicable in the present case. There is no substance in the application. It is accordingly rejected.

**(SARANG V. KOTWAL, J.)**

KISHOR VISHNU KAMBLE Digitally signed by KISHOR VISHNU KAMBLE Date: 2024.05.09 18:47:56 +0530