



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (ABA) NO.332 OF 2024

(Mr. Sagar Tarachand Joshi Vs. The State of Maharashtra and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.S. Karale Patil, Advocate for the applicant.
Mr. M.J. Khan, APP for the State.
Mr. A.H. Daga, Advocate for assist to prosecution.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 31, 2024.

Heard.

2. By this application, the applicant is seeking pre-arrest bail in connection with Crime No.198/2024 registered with Police Station Rajapeth, Amravati for the offence punishable under Sections 406 and 420 of the Indian Penal Code.

3. Learned Counsel for the applicant submitted that the applicant is dealing in a sale of used car. The first informant has purchased one Mercedes-Benz through the applicant as the applicant has informed him that one vehicle of Mercedes-Benz is for the sale which is a used car. The applicant has further informed that some repairing work has to be done in respect of the said car. Accordingly, the consideration amount was paid by the informant and the possession of the car was taken however, after taking possession it revealed that it was a damaged car and the gearbox of the said car was

completely damaged. It is alleged that present applicant has obtained amount from the informant and handed over the possession of the damage car and subsequently he has not repaired the said car also. Thus, he was duped by the present applicant. On the basis of said report, police have registered the crime against the present applicant.

4. Learned Counsel for the applicant submitted that as far as the transaction between the present applicant and the informant is concerned, the applicant is not the owner of the said car. Said car was received by him for sale and accordingly he informed the present applicant and the present applicant has purchased the same. Thus, the applicant is only the mediator. He has also stated in the application the chart regarding the payment of money which is received by him from the informant and paid by him to the original owner. Thus, he submitted that the applicant has not received any monetary gain in the said transaction. He submitted that after interim protection was granted in his favour he has cooperated with the investigating agency, and therefore, his custodial interrogation is not required. In view of that, he be protected by granting anticipatory bail.

5. Learned APP and learned Counsel for the complainant strongly opposed the application on the ground that the applicant entered into an agreement with the informant to sell to cars and obtained the consideration amount however, he has handed over only

one car to the informant. Thus, the applicant has obtained the money from the informant and only one damage car was handed over to the informant and hence, the informant was duped. It is further submitted that initially the applicant has registered him at GST portal however, subsequently he has cancelled his GST registration also. He further submitted that the applicant has also not cooperated with the investigating agency, the amount is to be recovered from the present applicant, and therefore, his custodial interrogation is required.

6. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that there was an agreement of purchasing of the two vehicles between the present applicant and the informant. During investigation, the Investigating Officer has collected the WhatsApp chat also from which it reveals that the applicant has obtained the amount from the informant and not handed over the vehicles as per the said agreement. As far as the interrogation part is concerned, the applicant was directed to attend the concerned police station and to cooperate with the investigating agency. The general diary entry shows that the applicant has not attended the police station. The alleged offence are punishable under Sections 406 and 420 of the IPC for which the punishment up to 7 years is provided. In the light of the observation of the Honourable Apex Court in the case of *Satender Kumar Antil Vs.*

Central Bureau of Investigation, [(2022) 10 SCC 51], the Investigating Officer has to issue the notice under Section 41 stating the reasons for the grounds of the arrest. Considering the observation and the guidelines issued by the Honourable Apex Court in the above said judgement, it is obligatory on the part of the Investigating Officer to issue the notice under Section 41 of the IPC. Thus, considering the offence punishable under Section 406 and 420 of the IPC for which the punishment provided is up to 7 years. The grounds for custodial interrogations are not made out by issuing the notice under Section 41 of the IPC by the Investigating Officer. Considering all these aspects, the application deserves to be allowed by granting anticipatory bail to the present applicant. The notice under Section 41 of the IPC is issued but it is not served to the applicant.

7. Considering the punishment provided for the offence and the interrogation can be carried out by imposing certain conditions on the present applicant, the interim protection deserves to be confirmed. Accordingly, I proceed to pass the following order:

- (i) The application is allowed.
- (ii) In the event of arrest, the applicant – Mr. Sagar Tarachand Joshi in connection with crime No.198/2024 registered with Police Station Rajapeth, Amravati for the offence

punishable under Sections 406 and 420 of the Indian Penal Code, be released on anticipatory bail on executing a PR.Bond in the sum of Rs.25,000/- with one solvent surety, in the like amount.

(iii) The applicant shall attend the concerned police station once in a week i.e. on every Sunday between 10.00 a.m. and 1.00 p.m. till filing of the charge-sheet and shall cooperate with the investigating agency.

(iv) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

(v) Contravention of any of the conditions imposed on the applicant by this Court would lead to cancellation of bail.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*