

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 531 OF 2021

Shubham s/o Uttamrao Tore
..vs..
State of Maharashtra, thr. P.S.O.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri H.S. Chitale, Advocate for applicant.
Shri M.J. Khan, A.P.P. for non-applicant/State.

CORAM : VINAY JOSHI, J.
DATED : 23/08/2021

Heard.

2. The applicant is seeking for pre-arrest protection in Crime No.570 of 2021 registered with Warora Police Station, District Chandrapur for the offence punishable under Sections 324, 504, 506 read with 34 of the Indian Penal Code, 1860.

3. The relevant provision for grant of pre-arrest bail can be found under Section 438 of the Code of Criminal Procedure. Undeniably, this provision would apply only in cases, where apprehension relates to non-bailable offence. In other words, if the offences are bailable, this provision would not come into play.

4. On query, learned Counsel appearing for the applicant would submit that Section 324 of the Indian

Penal Code is made non-bailable by way of amendment, hence, the provision of Section 438 of the Code of Criminal Procedure would apply. The Code of Criminal Procedure has been extensively amended by the Code of Criminal Procedure (Amendment) Act, 2005 (Act No.25 of the 2005). By way of said amendment, first schedule of the Code of Criminal Procedure, came to be amended by Section 42 and vide Clause (f)(iii), the offence punishable under Section 324 was made 'non-bailable'. However, the Amended Act has not come into the force since the notification was not issued by the Central Government as required under Section 1(2) of the Code of Criminal Procedure (Amendment) Act, 2005.

5. In absence of notification, the amendment to the Schedule would not come into force meaning thereby Section 324 of the Indian Penal Code remains 'bailable' offence, as it was earlier. This position is clarified by this Court in the case of ***Mr. Chandra Kanjappa Kuchchikurwe vs. State of Maharashtra (2013) 1 AIR Bom R 674*** . It is not brought to the notice that subsequent to said decision, any notification was issued by the Central Government in that regard. Moreover, similar view was recently taken by this Court in Anticipatory Bail Application No. 1711 of 2021 decided on 03.08.2021 in case of *Salauddin Babakhan Pathan vs. State of Maharashtra*

and anr. In view of that, the offence punishable under Section 324 of the Indian Penal Code being bailable, the provisions of Section 328 of the Indian Penal Code would not apply.

6. In short, the offence with which the applicant is charged, being bailable, the application for grant of anticipatory bail is not maintainable. Hence, disposed of.

JUDGE

Trupti