

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

CRIMINAL APPLICATION (BA) NO.142 OF 2023

(Sonu Jamshed Thakur Vs. State of Maharashtra)

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

Court's or Judge's Order

Shri A.A. Naik, Advocate for the applicant.

Shri A.M. Kadukar, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

RESERVED ON : JUNE 13, 2023.

PRONOUNCED ON : JUNE 27, 2023

Heard.

2. Present application is filed by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.413/2022 registered at police station Gadchiroli for the offence punishable under Section 406 and 420 read with Section 34 of the Indian Penal Code and under Section 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

3. The applicant is arrested on 03/09/2022, since then he is in jail.

4. The crime is registered on the basis of report lodged by Praful Digambarrao Bijwe who has alleged that the present applicant along with co-accused - Iqrar Jamshed Thakur and others on the pretext of running a Bhesi induced the applicant to part with an amount of Rs.30,00,000/- and had failed to repay the same. It is further alleged that initially an amount of Rs.15,00,000/-

had been paid to the applicant in respect of an earlier Bhisu which had been repaid. On the basis of said report, present applicant is arrested. Earlier he has filed an application bearing Criminal Bail Application No.242/2022 before the Sessions Court, Gadchiroli which came to be rejected. Now investigation is completed and charge-sheet is filed. Further custody of the present applicant is not required.

5. As per contention of the present applicant that from perusal of the charge-sheet it can be seen that the applicant and other accused persons had repaid substantial amounts of money collected from the informant. Subsequently, there was failure to pay certain amount. However, there was no intention to cheat from the inception and thus, no offence under Section 420 of IPC is made out. No offence under the provisions of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 is at all made out, as conducting a Bhisu would not fall within the meaning of financial establishment as defined under the Act. It is further contention of the applicant that the allegation is only that the huge amount of money has been paid to the present applicant in cash. There is nothing substantial on record to support the said allegation. Considering now investigation is completed and charge-sheet is filed, further custody of the present applicant is not required and no purpose will be served by keeping him behind the Bar. The entire evidence in the matter is documentary in

nature, and therefore, the question of tampering the witnesses does not arise. Considering all these aspects, he be released on bail.

6. Said application is strongly opposed by the State on the ground that during the course of investigation the Investigating Agency found properties of the present applicant and also collected the details of bank account and seized the property worth of Rs.11,40,000/- including two-wheeler and four-wheeler vehicles and plot. The applicant is also not resident of Gadchiroli and permanent resident of Uttar Pradesh. If he is released on bail, he would not be available for trial and trial will be held up and prays for rejection of the application.

7. Heard learned Counsel for the applicant. He submitted that the ingredients of the offence under Section 420 and 406 of the Indian Penal Code are not made out. For the offence alleged punishment is provided is imprisonment which may extend up to 7 years. In view of the judgment of the Hon'ble Apex Court in ***Satender Kumar Antil Vs. Central Bureau of Investigation, [(2022) 10 SCC 51]*** there is non compliance under Section 41A of the Code of Criminal Procedure. No reason for the arrest are reduced into writing by the Investigating Officer. He further submitted that even from the recitals of the charge-sheet, it reveals that applicant and other accused persons have already repaid the substantial amount which clears that there was no intention to cheat the informant from the inception. Even considering the allegations as it

is entire evidence is in the nature of documentary evidence. If applicant is released on bail there is apprehension that he will tamper with the prosecution evidence. Prima facie material is not sufficient to attract the ingredients of offence punishable under Section 406 and 420 of IPC. In support of his contention, he placed reliance on - (i) ***Satender Kumar Antil Vs. Central Bureau of Investigation***, [(2022) 10 SCC 51], (ii) ***Kisan Rupa Pawar Vs. State of Maharashtra*** [2019 SCC OnLine Bom 3957], (iii) ***Narendra Amrutlal Patel Vs. Assistant Commissioner of State Tax*** [2022 SCC OnLine Bom 6528], (iv) ***Conceicao B. D'Souza Vs. State of Goa*** [2022 SCC OnLine Bom 3922], (v) ***Chanda Deepak Kochhar Vs. Central Bureau of Investigation*** [2023 SCC OnLine Bom 72], (vi) ***Venugopal Nandlal Dhoot Vs. Central Bureau of Investigation*** [2023 SCC OnLine Bom 161] and submitted that in all these judgments the principle laid down is that from a plain reading of Section 41 and 41A of the Cr.P.C. a person accused of an offence punishable with imprisonment for a terms which may less than 7 years or which may extend to 7 years with or without fine cannot be arrested by the Police Officer without his satisfaction that such person had committed the offence punishable as aforesaid. A Police Officer before arrest in such cases has to be further satisfied that such arrest is necessary to prevail such person from committing any further offence or for proper investigation of the case. He submitted that considering the investigation is now completed and the

charge-sheet is filed, no purpose will be served by keeping the present applicant behind the Bar and hence he be released on bail.

8. *Per contra*, learned Additional Public Prosecutor submitted that there is a *prima facie* material against the present applicant and the Hon'ble Apex Court in Satender Kumar Antil Vs. Central Bureau of Investigation (*supra*) held that merely because the offence is punishable with imprisonment up to 7 years is not sufficient not to arrest the accused persons. Only condition is that the Investigating Officer shall satisfy himself whether the arrest of the person is required or not. Considering the sufficient material against the present applicant, bail application deserves to be rejected.

9. The accusation of the present applicant is only on the allegation that while running the Bhis scheme they have obtained the amount from the informant and not repaid it back and duped the informant to the tune of Rs.30,00,000/- and thereby committed an offence punishable under Section 420 and 406 of the IPC. There is no dispute that from the recitals of the FIR it reveals that the informant has admitted initially, the accused persons have obtained Rs.15,00,000/- from him and repaid the same, and subsequently again they have obtained the amount which is not repaid and thereby duped him and thereby committed an offence punishable under Section 420 of the IPC. Thus, from the recitals of the FIR it is apparent that some of the amount obtained by

the applicant and other co-accused already repaid to the informant and the amount subsequently obtained is not repaid as there was failure to pay certain amount. From the reply filed by the State also it is apparent that the investigation is completed and the charge-sheet is filed by the Investigating Agency. As per the Investigating Agency, the property worth Rs.11,40,000/- is already seized by the police of the present applicant. Thus, during investigation, the property of the present applicant is seized by the Investigating officer.

10. Investigation is already completed and the charge-sheet is filed. During investigation, the Investigating Officer has recorded the relevant statements of the witnesses from which it reveals that the present applicant along with other co-accused were running the Bhis scheme and have collected money from several persons. Thus, *prima facie* material is collected during the investigation to show the involvement of the present applicant in the alleged offence. Now only question is whether further custody of the present applicant is required or not. The Hon'ble Apex Court in the case of Satender Kumar Antil Vs. Central Bureau of Investigation (*supra*) while interpreting Section 41 held that Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offence, an arrest is not mandatory as can be seen from the mandate of this provision. The Hon'ble Apex Court further held that if the officer is satisfied that a person has committed a

cognizable offence, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offence, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offence, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured. This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offense alleged is more than seven years, among other reasons. It is further held that the consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offence. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy

themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.

11. By referring the judgment of ***Arnesh Kumar Vs. State of Bihar, [(2014) 8 SCC 273]*** the Apex court has held that from a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the

police officers to record the reasons in writing for not making the arrest.

12. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 Cr.PC.

13. It is further observed by the Hon'ble Apex Court that we are of the opinion that if the provisions of Section 41 Cr.PC. which authorizes the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasize that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.PC. for effecting arrest be discouraged and discontinued. It is further held by the Hon'ble Apex Court that no concrete step has been taken to comply with the mandate of

Section 41A of the Code. This Court has clearly interpreted Section 41(1)(b)(i) and (ii) *inter alia* holding that notwithstanding the existence of a reason to believe *qua* a police officer, the satisfaction for the need to arrest shall also be present. Thus, sub-clause (1)(b)(i) of Section 41 has to be read along with sub-clause (ii) and therefore both the elements of ‘reason to believe’ and ‘satisfaction *qua* an arrest’ are mandated and accordingly are to be recorded by the police officer. It is further held by the Hon’ble Apex Court that the non-compliance of Section 41A of the Cr.P.C. would entitle the applicant/accused for grant of bail.

14. The question whether the compliance under Section 41 of Cr.P.C. would be applicable for the economic offence is also dealt by the Hon’ble Apex Court in the judgment of Satender Kumar Antil Vs. Central Bureau of Investigation (*supra*) and in para No. 90 held that :

*“90. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of **P. Chidambaram v. Directorate of Enforcement**, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one*

case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgements, will govern the field.

91. *In the case of P. Chidambaram v. Directorate of Enforcement (supra) in paragraph No.23 it is held :*

“23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to

consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.”

15. In the case of Chanda Deepak Kochhar Vs. Central Bureau of Investigation (supra) this Court by referring the judgment of Satender Kumar Antil Vs. Central Bureau of Investigation (supra) and Arnesh Kumar Vs. State of Bihar (supra) held that from the aforesaid judgment it is evident that arrest is not mandatory, that the notice issued under Section 41-A is to ensure that the persons upon whom notice is served, is required to attend for ‘answering certain queries’ relating

to the case; that if an officer is satisfied that a person has committed a cognizable offence punishable with imprisonment for a term, which may be less than 7 years or which may extend to the said period, with or without fine, an arrest can follow only when there is a reason to believe or suspect that the said person has committed an offence, and there is a necessity for an arrest.

16. Accordingly in the facts also it appears that the Investigating Officer nowhere recorded his reasons that the applicant's arrest was required and he is arrested in accordance with law. Thus, in the present case also there is a non-compliance of mandate of Section 41(1)(b) (ii). Section 41A and Section 60A of Cr.P.C. will enure to the benefit of the petitioners, warranting their release on bail. The learned Sessions Judge has overlooked the mandate of law as well as the law laid down by the Hon'ble Apex Court in Arnesh Kumar (*supra*) and Satender Kumar Antil (*supra*). It is the responsibility of the Judicial Officers authorising detention under Section 167 Cr.P.C, to be first satisfied that the arrest made is legal and in accordance with law. The same is not an empty formality. If the arrest effected, does not satisfy the requirements of Section 41 of Cr.P.C. the concerned court is duty bound not to authorise further detention of the accused and release the accused forthwith. In fact, when an accused is arrested and produced before the concerned court, it is the duty of the Presiding Officer to consider whether specific reasons have been recorded for arrest,

and if so, *prima facie*, whether those reasons are reasonable reasons concludes that the arrest is required. This aspect is also considered in the case of Venugopal Nandlal Dhoot Vs. Central Bureau of Investigation (*supra*) and accused was released on bail.

17. The facts of the present matter shows that there is no compliance of Section 41A, the Investigating Officer has not recorded his reasons of satisfaction why the arrest of the present accused is required. As observed by the Hon'ble Apex Court that a person accused of an offence punishable with imprisonment for a terms which may less than 7 years or which may extend to 7 years with or without fine can be arrested by the Police Officer only on his satisfaction that such person had committed an offence punishable as aforesaid. Thus, it is obligatory on the part of the Investigating Officer to record his satisfaction. From a plain reading of the aforesaid provision it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. Thus, it is obligatory on the part of the Investigating Officer to record his satisfaction. From a plain reading of the aforesaid provision it is evident that a person accused of offence punishable with imprisonment which may extend to seven years with or without fine cannot be arrested by

the police officer unless and until he is satisfied that such person has committed the offence and such arrest is necessary to prevent such person from committing any further offence. The non-compliance of Section 41, in view of the guidelines issued by the Hon'ble Apex Court entitles him for bail. In the present case admittedly there is no compliance of Section 41(1)(b)(ii) of Cr.P.C. Now investigation is also completed and charge-sheet is filed. No purpose will be served by keeping the present applicant behind the Bar. Merely because the offence is in the nature of economical offence as observed by the Hon'ble Apex Court is not sufficient to deny the bail to the applicant.

18. Considering the allegation in the present case, in the light that some of the amount present applicant and other co-accused have already repaid and considering the entire evidence is documentary in nature so apprehension raised by the Investigating Agency that present applicant will tamper with the prosecution evidence is also not sustainable.

19. In view of that the present application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

- (i) The application is allowed.
- (ii) The applicant/accused – Sonu Jamshed Thakur in connection with Crime No.413/2022 registered at police station Gadchiroli for the offence punishable under

Section 406 and 420 read with Section 34 of the Indian Penal Code and under Section 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, be released on bail on executing P.R. Bond in the sum of 50,000/- (Rs. Fifty thousand) with one surety in the like amount.

- (iii) The applicant shall attend the trial Court on each and every date.
- (iv) The applicant shall not leave the jurisdiction of the District Court, Gadchiroli without prior permission of the Court.
- (v) The applicant shall furnish his cell phone number and address along with address proof. Additionally, he shall furnish the names of his two closed relatives and their address along with address proof and also furnish the address of his native place situated at Uttar Pradesh along with the address proof.
- (vi) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

(URMILA JOSHI-PHALKE, J.)