

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

CRIMINAL APPLICATION (ABA) NO. 130 OF 2023

Sheikh Salman Sheikh Rahim ..VS.. The State of Maharashtra through PSO, P.S. Katol, District Nagpur.

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

Court's or Judge's orders

Shri K. Ghatale, Advocate for Applicant.
Shri S.M. Ghodeswar, A.P.P. for Respondent/State.

CORAM : ANIL L. PANSARE, J.

DATED : MARCH 27, 2023.

1. Heard.
2. In continuation to order dated 10th March, 2023 and 17th March, 2023, learned A.P.P. submits that the custodial interrogation of applicant is not necessary.
3. Learned counsel for the applicant submits that if the protection is granted to the applicant for some days, he will withdraw the Application and approach the Trial Court for appropriate remedy. Such submission is made on the premise that if the protection is not granted and the applicant approaches Trial Court for regular Bail, the say of the prosecution is called and till the application is decided the persons like applicant are remanded to the judicial custody.
4. To my mind, once the Investigating Officer has made a statement that the custodial interrogation is not necessary, which otherwise indicates that the applicant

would not be arrested, there appears no reason why the learned Magistrate should remand the applicant to the Magisterial custody, unless the situation demands otherwise.

5. In the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and Another**, reported in **(2022) 10 SCC 51**, while considering the scope of Section 170 of the Code of Criminal Procedure, 1973 the Hon'ble Apex Court observed in paragraph No.36 as under :-

“The scope and ambit of Section 170 has already been dealt with by this Court in Siddharth v. State of U.P., MANU/SC/0600/2021 : (2021) 1 SCC 676. This is a power which is to be exercised by the court after the completion of the investigation by the agency concerned. Therefore, this is a procedural compliance from the point of view of the court alone, and thus the investigating agency has got a limited role to play. In a case where the prosecution does not require custody of the Accused, there is no need for an arrest when a case is sent to the magistrate Under Section 170 of the Code. There is not even a need for filing a bail application, as the Accused is merely forwarded to the court for the framing of charges and issuance of process for trial. If the court is of the view that there is no need for any remand, then the court can fall back upon Section 88 of the Code and complete the formalities required to secure the presence of the Accused for the commencement of the trial. Of course, there may be a situation where a remand may be required, it is only in such cases that the Accused will have to be heard. Therefore, in such a situation, an opportunity will have to

be given to the Accused persons, if the court is of the prima facie view that the remand would be required. We make it clear that we have not said anything on the cases in which the Accused persons are already in custody, for which, the bail application has to be decided on its own merits. Suffice it to state that for due compliance of Section 170 of the Code, there is no need for filing of a bail application.”

6. The applicant, the learned Magistrate, the prosecutors will naturally follow the dictum of the Apex Court and therefore the apprehension put forth by the applicant is uncalled for.

7. The Application is disposed of in above terms.

(ANIL L. PANSARE, J.)

Kirtak.