

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

CRIMINAL APPLICATION (ABA) NO.161 OF 2023

(Vijay Lalkiran Dwivedi 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 S.V. Sirpurkar, Advocate for the applicant.
Shri M.J. Khan, APP for the non-applicant/State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JUNE 23, 2023.

Heard.

2. By this application the applicant is seeking anticipatory bail in the event of arrest in connection with Crime No.124/2023 registered at police station Gittikhadan, Nagpur City for the offence punishable under Sections 354-A, 354-D read with Section 34 of the Indian Penal Code and Section 67-A of the Information Technology Act, 2000.

3. The applicant is apprehending arrest at the hands of the police as crime is registered against the present applicant on the basis of report lodged by the victim girl on an allegation that applicant is a Psychologist and victim has approached to him for treatment as there was no cordial relationship between her and her husband. At the relevant time, the applicant has created the a counselling group and added her without her consent. On the said group he posted some comments and also circulated one obscene video link and thus outraged the

modesty and committed an offence under Section 354-A and 354-D of the Indian Penal Code.

4. As per the contention of the applicant he is apprehending arrest at the hands of police. In fact, his custodial interrogation is not required. Now investigation is completed. The documents are already collected by the Investigating Officer. It is further contention of the applicant that in fact he is implicated falsely in the alleged offence. He is a respectable person from the society and on the basis of false allegation the informant is implicating him in a criminal complaint. There are no criminal antecedents against him. He is ready to abide the conditions.

5. Said application is strongly opposed by the Additional Public Prosecutor appearing for the State on the ground that physical custody of the present applicant is required for the interrogation purpose. Hence application deserves to be rejected.

6. On 21/03/2023, on the basis of submission made by the learned Additional Public Prosecutor, this Court has noted that the Investigating Officer has instructed him that the custodial interrogation of the applicant is not required. Thereafter the Investigating Officer remained absent and not turned up to give the information whether the custodial interrogation of the present applicant is required or not. Now today police constable is present before the Court on his behalf and who intimated the learned Additional Public Prosecutor

that though some documents are seized but still custodial interrogation of the present applicant is required.

7. At the initial stage while considering the interim prayer for the ad-interim protection, this Court has noted that in view of the direction issued by the Hon'ble Apex Court in ***Satender Kumar Antil Vs. Central Bureau of Investigation, [(2022) 10 SCC 51]*** and ***Arnesh Kumar Vs. State of Bihar, [(2014) 8 SCC 273]***, wherein the Hon'ble Apex Court by referring the judgment of *Arnesh Kumar* (supra) has held in paragraph Nos.11 and 12 as under :

“11. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions :

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 Cr.PC.;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41 Cr.PC.;

11.3. The police officer shall forward the check list duly filed and furnish the reasons and material which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in

terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41 Cr.P.C. be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.”

8. Thus, in view of the judgment the Investigating Officer has to satisfy himself why the custody of the applicant is required and he shall record his satisfaction in writing. It is held by the Hon'ble Apex Court that even for cognizable offence an arrest is not mandatory as can be seen from the mandate of Section 41 of the Code of Criminal Procedure. 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.

9. Section 41 of the Cr.P.C. granted 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 offence alleged is more than seven years, among other reasons. It is further observed by the Hon'ble Apex Court that the consequence of non-compliance with Section 41 of Cr.P.C. 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 grant of bail.

10. Though it is submitted by the learned Additional Public Prosecutor that the custodial interrogation of the present applicant is required however, nothing is placed on record to show that the Investigating Officer has satisfied himself regarding the requirement of arrest. In fact, from the police papers it reveals that the entire investigation is completed and relevant documents are already seized. The Investigating Officer has not satisfied himself regarding the necessity of the arrest of the present applicant. Considering the same, in view of the observation of the Hon'ble Apex Court when the Investigating Officer fails to comply, in view of Section 41 the applicant is entitled for enlargement on bail. Considering the same present application deserves to be allowed by imposing certain conditions. Hence, I proceed to pass the following order :

- (i) The application is allowed.
- (ii) The applicant – Vijay Lalkiran Dwivedi in the event of arrest in Crime No.124/2023 registered at police station Gittikhadan, Nagpur City for the offence punishable under Sections 354-A, 354-D read with Section 34 of the Indian Penal Code and Section 67-A of the Information Technology Act, 2000, be released on anticipatory bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.
- (iii) The applicant shall attend the concerned Police Station as and when required for investigation purpose.
- (iv) The applicant shall furnish his cell phone number and address along with address proof.
- (v) 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.)