

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

CRIMINAL APPLICATION (ABA) NO. 169 OF 2023

Naim Khan Bismilla Khan and Another

..VS..

The State of Maharashtra through PSO, PS Malkapur City, Dist. Buldhana

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

Court's or Judge's orders

Shri A.R. Prasad, Advocate for Applicant.

Shri S.M. Ghodeswar, A.P.P. for Non-applicant/State.

CORAM : ANIL L. PANSARE, J.

DATED : MARCH 30, 2023.

1. Learned A.P.P. submits that charge-sheet will be filed in a week commencing from 10th April, 2023 and the date will be communicated to the applicant. The applicant shall attend the trial Court on the said date.

2. Since the learned A.P.P. has on 23.03.2023 made a statement that the custody of the applicant is not necessary, the applicant, learned Magistrate and the prosecutors before the trial Court shall proceed with the further proceeding in terms of law laid down 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.”

3. All concerned to act in terms of above. The application is disposed of accordingly.

(ANIL L. PANSARE, J.)