

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

CRIMINAL APPLICATION (ABA) NO.180 OF 2023

(Pramod Purushottam Deshpande and ors. 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 R. R. Vyas, Advocate for the applicants.
Shri A.M. Kadukar, APP for the State.
Shri Vivek Awchat, Advocate for Assist to Prosecutor.

CORAM :- URMILA JOSHI-PHALKE, J.
RESERVED ON :- JULY 25, 2023
PRONOUNCED ON :- AUGUST 03, 2023.

Heard.

2. By this application, applicant Nos.1 to 7 are seeking anticipatory bail in connection with Crime No.194/2023 registered at police station Ghatanji, District Yavatmal for the offence punishable under Sections 418, 420, 468 and 471 read with Section 34 of the Indian Penal Code.

3. The applicants are apprehending arrest at the hands of police as accusation is made against them on the basis of report lodged by Shridhar Baliram Jadhav. As per the contention of the applicants applicant No.1 Pramod Purushottam Deshpande is retired from Service and is a devotee of Shri Ram Maharaj. Applicant No.2 is his wife and she has also devoted her service to Shri Ram Maharaj. They became Trustee of Shri Narsimha Saraswati Sansthan, Shrikshetra, Umbarzara (Injala), Taluka

Ghatanji, District Yavatmal and Shri Ram Maharaj was the President of the said trust. Applicant Nos.3 and 4 are Engineer by Profession, applicant Nos.5 to 7 are also well educated persons and devoted their services to Shri Ram Maharaj. The complainant was the Broker in share market and also the follower of Shri Ram Maharaj. There was a difference between two groups of the Trustees and he has lodged the complaint against the present applicants. As per his allegation, applicant No.2 Prachi Deshpande and applicant No.3 Abhay Charde were looking after the financial affairs of the Trust. Applicant No.3 has forged the signature of Shri Maharaj on the cheques and misappropriated the amount of Rs.43,00,000/-. The applicants also tried to take illegal possession of the Trust property and subsequently, they left the premises of the trust by carrying the gold ornaments i.e. 6 gold rings and handwritten literature of the Maharaj.

4. As per the contention of the applicants, they are falsely implicated in the alleged offence merely because there was a difference between two groups of the trustees. As far as the allegation is concerned, there is specific allegation against applicant Nos.2 and 3. As far as the allegation against the other applicants is concerned, are general in nature. The custodial interrogation of the applicants is not required as the alleged forged documents are lying with the bank and as far as the gold ornaments is concerned, except bare statement no other data is

available to connect the present applicants with the alleged offence.

5. Said application is strongly opposed by the State on the ground that since the date of the registration of the offence, applicants have not cooperated with the investigation. As per the allegation, the complainant was working as a Manager in the said Sansthan and applicant Nos.1 to 6 are the Trustees. Applicant Nos.1, 2 and 7 were residing in the Ashram permanently. Shri Ram Maharajji was 85 years old and the applicants were looking after the entire financial affairs. After audit of the Trust, it reveals that the applicants have committed misappropriation of the amount of Rs.43,00,000/- and they have also taken 6 gold rings and literature of Maharaj. The custodial interrogation of the applicants is required for recovery of the said articles and prays for rejection of the application.

6. Said application is also opposed by the informant and reiterated the contention that custodial interrogation of the applicants is required for recovery of the literature and the articles taken by the applicants.

7. Heard learned Counsel Shri Vyas for the applicants. He reiterated the contention that as far as 6 gold rings and literature is concerned, there is no material to show that the applicants have carried the same. In fact, there is no entry in any record regarding the gift of said 6 gold rings. On the contrary, the statements of the

witnesses shows that no entry is taken as far as the gold rings is concerned. As far as the literature of the Maharaj is concerned, there is no material on record to show that said literature is in possession of the present applicants.

8. Learned Additional Public Prosecutor and learned Counsel Shri Awchat objected the application on the ground that recovery of the stolen articles is required to be carried out hence, bail application deserves to be rejected.

9. Having heard both the sides and on perusal of the investigation papers, it reveals that applicant Nos.2 and 3 were looking after the financial affairs of the trust. From the audit report, it is apparent that applicant No.2 Prachi Deshpande and applicant No.3 Abhay Charde have not produced the relevant documents before the Auditor. During investigation, it further reveals that in the year 2018-2019, 2019-2020 and 2020-2021 the amount of Rs.38,50,000/- is siphoned in the other accounts. The Investigating Officer has already collected the photocopies of the five cheques from the bank for an amount of Rs.10,00,000/-, Rs.10,00,000/- Rs.5,00,000/-, Rs.9,00,000/- and Rs.4,50,000/- respectively. It is alleged that the President has not signed on the said cheques. Said five cheques are already referred to the handwriting expert. From the statements of the witnesses, it reveals that it was applicant Nos.2 and 3 who were dealing with the financial affairs of the Trust. Audit was carried out by

Hrishikesh Shrikant Pande. The statement of said Hrishikesh Pande also discloses the involvement of applicant No.3 in the alleged crime. As far as applicant Nos.1 and 4 to 7 are concerned, general allegations are made against them.

10. Considering the various statements and material collected during the investigation, the *prima facie* case is made out against applicant Nos.2 and 3 whereas the allegation in the general nature are levelled against rest of the applicants.

11. The Hon'ble Apex Court in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation and anr. [(2022) 10 SCC 51]*** observed in para 23, 24 and 25 as under :

“23. 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. 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.

24. 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 offence alleged is more than seven years, among other reasons.

25. 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.”

12. Thus, the police officer is bound to record reasons in writing for arrest, so also when he chooses not to arrest the accused. It further provides that non compliance of Section 41 of the Code would entitle the accused to a grant of bail. The Apex Court in paragraph 27 has reproduced findings in the case of ***Arnesh Kumar Vs. State of Bihar, [(2014) 8 SCC 273]*** which reads thus:

“27. On the scope and objective of Sections 41 and 41-A, it is obvious that they are facets of Article 21 of the Constitution. We need not elaborate any further, in light of the judgment of this Court in Arnesh Kumar v.

State of Bihar:

“7.1. 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.

7.2. 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.

7.3. 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 CrPC.

8. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57 CrPC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey:

8.1. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167 CrPC. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.

8.2. Before a Magistrate authorises detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition

precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused.

8.3. The Magistrate before authorising detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording his satisfaction in writing that the Magistrate will authorise the detention of the accused.

8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

9. ... The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice

he shall not be arrested, unless for reasons to be 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 emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the 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 IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b) (ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials 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-A CrPC 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 the 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 IPC 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.”

13. Thus, in view of the observation of the Hon’ble Apex Court the Investigating Officer has to satisfy himself regarding the requirement of the arrest. Learned Additional Public Prosecutor submitted that the custody of the present applicants is required for the purpose of

recovery of the articles. There is no material to show that 6 gold rings and literature was carried out by the present applicants. As far as the allegation of forgery regarding the signature of the President of the Trust is concerned, is against applicant No.3 Abhay Charde. Applicant No.2 was also looking after the financial affairs. In view of that considering the volume of misappropriation and the audit report shows involvement of the applicant Nos.2 and 3 in the alleged misappropriation, their prayer for grant of anticipatory bail deserves to be rejected. As far as applicant Nos.1 and 4 to 7 are concerned, general allegations are made against them. In view of that, their prayer for grant of bail deserves to be allowed. Hence, I proceed to pass the following order:

- (i) The application is partly allowed.
- (ii) In the event of arrest, applicant Nos.1 and 4 to 7 i.e. 1) Pramod Purushottam Deshpande, 4) Omprakash Anand Mahajan, 5) Ojaswi Anand Mahajan, 6) Puja Anand Mahajan and 7) Sudhir Arvind Charde in Crime No.194/2023 registered at police station Ghatanji, District Yavatmal for the offence punishable under Sections 418, 420, 468 and 471 read with Section 34 of the Indian Penal Code, be released on anticipatory bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) each with one surety each, in the like amount.

- (iii) Applicant Nos.1 and 4 to 7 i.e. 1) Pramod Purushottam Deshpande, 4) Omprakash Anand Mahajan, 5) Ojaswi Anand Mahajan, 6) Puja Anand Mahajan and 7) Sudhir Arvind Charde shall attend concerned Police Station once in a week i.e. on every Sunday between 10.00 a.m. and 1.00 p.m. and shall cooperate with the Investigating Agency, till filing of the charge-sheet.
- (iv) Applicant Nos.1 and 4 to 7 shall furnish their Cell-phone number and address along with address proof.
- (v) Applicant Nos.1 and 4 to 7 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.
- (vi) The prayer of applicant Nos.2 and 3 for grant of anticipatory bail is hereby rejected.

14. The application is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*