

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

CRIMINAL APPLICATION (ABA) NO. 194/2023

GANESH S/O. RAMRAO WAKDE

VS

STATE OF MAH. THR. PSO, PS KALMESHWAR NAGPUR

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

Court's or Judge's Order

Mr PS. Khubalkar, Advocate for the applicant.

Mr M.J. Khan, APP for the respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 14/06/2023.

1. Heard.
2. Application is for anticipatory bail in the event of his arrest in crime No.77/2023 registered with Police Station, Kalmeshwar, Nagpur (Gramin), for the offences punishable under Section 420 and 408 of the Indian Penal Code.
3. The applicant is apprehending arrest at the hands of Police as crime is registered against him, on the basis of report lodged by one Ranjana Gopalkrushna Waghalkar, on an allegation that she is the owner of survey No. 47 admeasuring 1 H 10 R, she has decided to sell the said agricultural land to one Natthu Bhoge. One Mr Rajurkar and Mr Deshpande were adjacent land owner, present applicant approached to the informant and asked her to pay Rs. 14,00,000/- to provide the way

to the purchaser. As per the allegation, the said amount is to be paid to the said adjacent land owner. Accordingly, the informant has paid the amount of Rs. 14,00,000/-. However, subsequently it reveal to her that the said adjacent land owners have not received the said amount and the applicant has committed the breach of trust.

4. As per the contention of the present applicant, no such transaction has taken place between the informant and him, on the false allegation, the report is filed against him. Now, the investigation is practically completed, his custodial interrogation is not required and hence he be protected by granting anticipatory bail.

5. The said application is strongly opposed by the State on the ground that the amount of Rs. 14,00,000/- is to be recovered from the present applicant which is obtained by him by way of misrepresenting the complainant. Thus, custodial interrogation is required and hence application deserves to be rejected.

6. Heard learned counsel Mr P.S. Khubalkar for the applicant. He submitted that in fact, no such transaction has taken place between the present applicant and the informant, she has lodged the false report against the present applicant. Now, investigation is practically completed and custodial interrogation of the present applicant is not at all required.

7. He further submitted that though there are statements of the adjacent land owners, the said false statements are recorded by the investigating Officer only to suit the prosecution case. Considering the allegation against the present applicant punishment provided is not more than seven years, the applicant be released on anticipatory bail in the light of guidelines issued by the Hon'ble Apex Court **Satender Kumar Antil vs Central Bureau Of Investigation and another** reported in *(2022) 10 SCC 51*.

8. Per contra, learned APP Mr M.J. Khan vehemently submitted that the complainant was misrepresented and amount of Rs. 14,00,000/- was extracted from custodial interrogation of the present applicant is required and the amount is to be recovered. Hence, bail application deserves to be rejected.

9. Having heard both the sides and on perusal of the investigating papers, it reveals that the informant was the owner of land Survey No. 47 situated at Dhapewada Shiwar, admeasuring 1.H. 10R. It is alleged for that she decided to sellout the said land to the Natthu Bhonge but there was no access road and the present applicant approach to her and misrepresented her and obtained Rs. 14,00,000/- from her to pay the adjacent land owners. During the investigation, the statement of the adjoining land owners are recorded by the Investigating

Officer. From their statement, it reveals that they have not received any amount and there was no communication between the present applicants. Thus, prima-facie from the investigation papers, it reveals that present applicant has misrepresented and extracted the amount from the informant. As regards the custodial interrogation is concerned, it is necessary to look into the direction issued by the Hon'ble Apex Court in the case of **Satender Kumar Antil vs Central Bureau Of Investigation** referred (supra), wherein it is observed by the Hon'ble Apex Court by referring the judgment of **Arnesh Kumar** that the compliance of Section 41 of the Code of Criminal Procedure is mandatory and opined that if provisions of Section 41 of the Code is complied then number of cases which come to the Court for grant of anticipatory bail substantially reduce. The Court then directed the State Government to provide all the Police Officers a checklist containing specified sub-clauses under Section 41(1) (b) (ii). The Police Officer shall required to forward the check list duly filled and furnished the reasons and material which necessitated the arrest while forwarding/producing the accused before the Magistrate for further detention. The Hon'ble Apex Court then directs the Magistrate to peruse the report furnished by the Police Officer and only after recording its satisfaction, the Magistrate will authorise detention. It is then directed

that the decision not to arrest an accused should be forwarded to the Magistrate within two weeks from the date of the institution of the case. Such decision could only be extended by the Superintendent of Police of the district for the reasons to be recorded in writing. The Apex Court has then held that the failure to comply with the directions aforesaid shall apart from rendering the Police Officer concerned liable for departmental action, he shall also be liable to be punished for contempt of court and to be instituted before the High Court having territorial jurisdiction. The Apex Court has also held that non-compliance with Section 41 of the Code would entitle the accused to grant of bail.

10. Thus, firstly, the Police Officer has to take a decision whether or not the accused should be arrested. He has to record the reasons in writing in support of the decision. This decision is to be taken within two weeks of the registration of the case. If the Police Officer takes decision 'not to arrest' the accused, the said decision shall be communicated to the concerned Magistrate. If the Police Officer takes a decision 'to arrest' the accused, then upon his arrest the Police Officer is duty-bound to produce the accused before the Magistrate within 24 hours and while producing the accused, the Police Officer is duty-bound to furnish the reasons and material which necessitated the arrest and thereupon the Magistrate is

duty-bound to peruse the report furnished by the Police Officer and only after its satisfaction the Magistrate will authorise further detention. Needless to mention that the satisfaction by Magistrate will be reflected in its order. The Hon'ble Apex Court further discourage the practice followed by the Investigating Officers of mechanically reproducing the case-diary of almost of the reasons contained in Section 41 of the Code for effecting arrest.

10. The Hon'ble Apex Court has held that sub-clause (1)(b)(i) of Section 41 has to be read along with sub-clause (ii), and therefore, both the elements of 'reasons to believe' and 'satisfaction qua an arrest' are mandated and accordingly are to be recorded by the Police Officer. It is further observed by the Hon'ble Apex Court that the Police Officer, before arresting, 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 of Section 41 of the Code is satisfied, power of arrest should be exercised.

11. This is not to suggest that in the cases where maximum punishment is seven years, the accused persons cannot be arrested at all. What is suggested, is that in normal and ordinary course, the police should always avoid arresting a person and sending him to jail, if

it is possible for the police to complete the investigation without his arrest and if every kind of cooperation is provided by accused to the Investigating Officer in completing the investigation. It is only in cases of utmost necessity where investigation cannot be completed without arresting the person, for instance, a person may be required for recovery of incriminating articles or weapons of offence or for elucidating some information or clue as to his accomplices or any substantial evidence, that his arrest may be necessary. Such an arrest may also be necessary if the Investigating Officer concerned and/or incharge of police station thinks that presence of the accused will be difficult to procure because of grave and serious nature of the crime as the possibility of his absconding or disobeying the process or fleeing from justice cannot be ruled out.

12. Thus, as per the observations of the Hon'ble Apex Court, it is not the case that the accused cannot be arrested in the offences wherein the punishment less than seven years or which may extend to seven years is provided but in appropriate case, arrest of accused will be justified, of course, subject to strict compliance of law laid down by the Hon'ble Apex Court in the aforementioned two judgments.

13. In the present case, the recitals of the FIR and the statement of the two witnesses i.e. adjacent land

owners shows that there was no communication between the present applicant and then they have not demanded the said land. Though it is submitted by the present applicant as well as learned counsel for the applicant that no such transaction has taken place but no reason put forward by the applicant regarding his false implication.

14. In the present case, learned APP pointed out that during the investigation, the Investigating Officer has recorded the statement of witnesses namely Subroto Chaterjee in whose presence, the said amount was given to the present applicant. Thus, prima-facie material is sufficient to show the involvement of the present applicant with alleged offence. The grounds mentioned regarding the custodial interrogation are also satisfactory.

In view of that, criminal application deserves to be **rejected**. Of course, the investigating officer shall take necessary steps after strict compliance of law laid down by the Hon'ble Apex Court.

Accordingly, criminal application is hereby **rejected**.

JUDGE