

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

CRIMINAL APPLICATION (ABA) NO. 218 OF 2023

JAGANNATH @ JAGAN S/O DEORAM SONAWANE VS. THE STATE OF MAHARASHTRA

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri. M. I. Dhatriak, Advocate for applicant.
Shri. I. J. Damle, APP for respondent State.

CORAM : URMILA JOSHI-PHALKE J.

DATE : 16/06/2023

Present application is filed by the applicant for grant of anticipatory bail, as he is apprehending arrest in Crime No.673/2022 registered with Police Station, Ramdaspath, Akola for the offences punishable under Sections 420, 506 read with Section 34 of the Indian Penal Code, 1860. As per the allegation in the FIR lodged by the informant Pratik Balu Tayde that he got acquaintance with co-accused Sanjay Shripat Ingle, who promised him that if he pays an amount of Rs.5,00,000/-, he will provide him a job in railway department. Accordingly, he went along with Sanjay Ingle at Bhusawal, where he met the applicant and handed over an amount of Rs.2,50,000/- to Sanjay Ingle, then he handed over the said amount to the present applicant. Total

amount of Rs.3,50,000/- was paid to Sanjay Ingle and present applicant, but no job was offered to him and he was duped for Rs.3,50,000/-. On the basis of said report police have registered offence against the present applicant and other co-accused. As per the contention of the present applicant that he has implicated falsely in alleged offence. In fact there is neither promise nor acceptance of money from the informant. His physical custody is not required and hence he be protected by granting anticipatory bail.

2. Said application is partially opposed by the State on the ground that custodial interrogation of the present application is required for investigation purpose for recovery of the said amount, hence application deserves to be rejected.

3. Heard. Shri.M.I.Dhatrak, learned counsel for the applicant submitted that as per the allegation it was the co-accused who promised the informant of giving job. On the part of the present applicant there was no promise, no acceptance of amount even in the FIR the informant had handed over an amount to Sanjay Ingle and not to the present applicant, therefore, physical custody of the present applicant is not required and hence he be directed to be released by granting anticipatory bail. He further submitted

that the co-accused to whom the amount was paid by the informant, is already released on anticipatory bail by the Sessions Court. Thus on the ground of parity also, the present applicant is entitled for anticipatory bail.

4. Per contra learned APP partially objected the application on the ground that physical custody of the present applicant is required as interrogation is about recurring the amount, as well as to ascertain whether any property is purchased by the present applicant and invested the said amount in any movable or immovable property.

5. Having heard both the sides and perusal of the FIR, as well as the investigation papers it is apparent that it was Sanjay Ingle with whom the informant got acquaintance and said Sanjay took him to the present applicant. As per the recital of the FIR the amount was handed over by the informant to said Sanjay Ingle and then he handed over the said amount to the extent of Rs.2,50,000/- to present applicant. Admittedly, said Sanjay Ingle is already released on anticipatory bail in the event of arrest by the Sessions Court.

6. Considering the allegations, the crime was registered under Sections 420, 506 read with 34 of the Indian Penal Code, for which the punishment is provided upto seven years. The directions issued by the Hon'ble Apex Court in the case of *Satender Kumar Antil vs. Central Bureau of Investigation and another*, reported in (2022) 10 SCC 51 and *Arnesh Kumar vs. State of Bihar*, reported in (2014) 8 SCC 273 shows that by referring the judgment of *Arnesh Kumar* (supra), the Supreme Court, while considering the offences punishable upto seven years, has held 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 will substantially reduce. The Apex Court has held 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. The Court then directed the State Government to provide to all the Police Officers a check list containing specified sub-clauses under Section 41(1)(b)(ii). The Police Officers are required

to forward the check list duly filled and furnish the reasons and material which necessitated the arrest while forwarding/producing the accused before the Magistrate for further detention. The 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 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.

7. While passing interim order this Court has considered the directions in the case of *Satender Kumar* (supra), wherein the Apex Court observed that despite directions in *Arnesh Kumar's* (supra) case, no concrete steps have been taken to comply with the

mandate of Section 41A of the Code, and therefore, the Hon'ble Apex Court has issued guidelines to deal with the bail applications.

8. In view of the directions, 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. If the Police Officer takes decision 'not to arrest' the accused, the said decision shall be communicated to the concerned Magistrate within two weeks from the date of institution of the case/FIR. This decision, however, should be taken as expeditiously as possible, for the reason that the best evidence could be collected immediately after commission of the offence and further to rule out the possibility of tampering with the evidence. 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 recording its satisfaction the Magistrate will authorise further detention.

9. It is also observed by the Hon'ble Apex Court that 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. In the light of these guidelines, thus, it is obligatory on the part of the Investigating Officer to record the reasons which shows that there are reasons to believe and satisfaction why arrest of the present applicant is required. From the investigation papers it reveals that this Court has given directions to ascertain whether the arrest of the present applicant is required or not, no statement is made along with the reasons recorded by assigning the reasons behind the necessity of arrest. Considering the fact that co-accused to whom the amount was handed over is already released on bail and there is no satisfaction recorded by the Investigating Officer why arrest is required. The application is deserves to be allowed, accordingly, I proceed to pass the following order :-

ORDER

1. In the event of arrest applicant, namely, **Jagannath @ Jagan s/o Deoram Sonawane** shall be released on anticipatory bail in connection with Crime No.673/2022 registered under Sections 420, 506 read with 34 of the Indian Penal Code, 1860, on executing P.R.Bond of Rs.50,000/- [Rupees Fifty Thousand only] with one solvent surety in the like amount.
2. Applicant shall remain present before the Investigating Officer as and when required for investigation purpose.
3. The applicant shall not involve in pressurizing, threatening or induce any witnesses who are connected with the alleged trial.
4. The applicant shall submit his cell number along with his address proof to the Investigation Officer.

[URMILA JOSHI-PHALKE J.]