

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

...  
**CRIMINAL APPLICATION (ABA) NO. 221/2023**

Vishal Shankar Jukantwar

.. Applicant

**versus**

The State of Maharashtra

Th: Its PSO PS Digras, Dist. Yavatmal and another.

.. Respondents

.....  
Mr.A.A.Zade, Advocate for the applicant /s

Mr. M.J.Khan, APP for Respondent No.1

Mr. A P Modak, Adv.for Respondent No.2  
.....

**CORAM:** ANIL L. PANSARE, J.

**DATED** : 26<sup>th</sup> April, 2023.

**PC:**

. Heard.

2. The applicant is apprehending arrest in Crime No. 311/2021 registered with Police Station, Digras, Dist. Yavatmal for the offences punishable under Sections 363, 366A, 376(2)(n) of the Indian penal Code , 1860 and Sections 4,8,12 and 18 of the Protection of Children from Sexual Offences Act, 2012.

3. The learned APP submits that the custody of the applicant is not necessary.

4. The learned Counsel for the applicant submits that if the protection is granted to the applicant for some days, he will withdraw the Application and approach the trial court for appropriate remedy. Such submission is made

on the premise that if the protection is not granted and the applicant approaches the trial court for regular bail, the say of the prosecution is called and till the application is decided the persons like the applicant are remanded to the judicial custody.

5. To my mind, once the charge-sheet is filed, the custodial interrogation or arrest may not be necessary. Further, the custody of the appellant is also not warranted. Thus, there appears no reason why the learned Magistrate should remand the applicant to the Magisterial custody, unless the situation demands otherwise.

6. In the case of ***Satender Kumar Antil V/s Central Bureau of Investigation and Another, (2022) 10 Supreme Court Cases 51***, while considering the scope of Section 170 of the Code of Criminal Procedure, 1973 the Hon'ble Apex Court, in this regard, has issued following guidelines and observed thus :

***“1. Taking note of the continuous supply of cases seeking bail after filing of the final report on a wrong interpretation of Section 170 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code” for short), an endeavour was made by this Court to categorise the types of offences to be used as guidelines for the future. Assistance was sought from Shri Sidharth Luthra, learned Senior Counsel, and learned Additional Solicitor General Shri S. V. Raju.***

## **2. Categories/Types of Offences**

*(A) Offences punishable with imprisonment of 7 years or less not falling in Categories B & D.*

*(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.*

*(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act, [Section 212 (6)], etc.*

*(D) Economic offences not covered by Special Acts.*

### **REQUISITE CONDITIONS**

*(1) Not arrested during investigation.*

*(2) Cooperated throughout in the investigation including appearing before investigating officer whenever called.*

*[No need to forward such an accused along with the charge-sheet (Siddharth v. State of U.P)].*

### **CATEGORY A**

*After filing of charge-sheet/complaint taking of cognizance*

*(a) Ordinary summons at the 1<sup>st</sup> instance/including permitting appearance through lawyer.*

*(b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.*

*(c) NBW on failure to appear despite issuance of bailable warrant.*

*(d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.*

*(e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.*

#### **CATEGORIES B/D**

*On appearance of the accused in court pursuant to process issued bail application to be decided on merits.*

#### **CATEGORY C**

*Same as Categories B and D with the additional condition of compliance of the provisions of Bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POCSO, etc.*

*4. Needless to say that Category A deals with both police cases and complaint cases.*

*5. The trial courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat while has been put by the learned ASG is that where the accused have not cooperated in the investigation nor appeared before*

*the investigating officers, nor answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.*

*6. We may also notice an aspect submitted by Mr. Luthra that while issuing notice to consider bail, the trial court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions.*

*7. The suggestions of the learned ASG which we have adopted have categorised a separate set of offences as “economic offences” not covered by the special Acts. In this behalf, suffice to say on the submission of Mr. Luthra that this Court in Sanjay Chandra v. CBI has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account :*

*(a) seriousness of the charge, and*

*(b) severity of punishment.*

*Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the*

*punishment imposed by the statute would also be a factor.*

8. ....

9. ....

10. ....

11. ....

**43.**        *The scope and ambit of Section 170 has already been dealt with by this Court in Siddharth v. State of U.P. 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.”*

***(Emphasis now)***

7. The applicant, the learned Magistrate, the Prosecutors will naturally follow the dictum of the Hon'ble Apex Court, and therefore, the apprehension put-forth by the Appellant is uncalled for.

8. The Criminal Application is allowed to be withdrawn in above terms.

**[ANIL L. PANSARE, J.]**

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