

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

CRIMINAL APPLICATION (BA) NO.340 OF 2023

Pawan s/o Santosh Vibhute

Vs.

State of Maharashtra, through PSO, PS, Washim City, Dist. Washim

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

Court's or Judge's orders.

Shri R.S. Kurekar, Advocate for applicant.

Shri M.J. Khan, APP for non-applicant/State.

CORAM : ANIL L. PANSARE, J.

DATE : APRIL 25, 2023.

This is an application under Section 439 of the Code of Criminal Procedure (for short, 'Code'). The applicant has been arrested on 14.03.2023 in Crime No.49/2023 registered with Police Station, Washim, District Washim for the offences punishable under Sections 392 and 395 read with Section 34 of the Indian Penal Code (for short, 'IPC').

2. Initially the FIR was registered under Sections 392 and 34 of the IPC. Later on the offence under Section 395 came to be added. The FIR indicates that the informant runs pathology laboratory. He received an amount of ₹9,50,000/- from private monthly investment scheme (*Bhishi*). Out of the said amount, he has paid ₹3,00,000/- for purchasing the plot. He kept ₹6,50,000/- in his laboratory. His employees were aware of the said fact. In the intervening night of 26.01.2023 and 27.01.2023, three unknown person have at the point of knife stolen amount of ₹6,50,000/-. Informant's

employee – Satish was on night duty. Three unknown persons trespassed and at the point of knife had stolen the amount. At that time, one Yogesh Mapari was also present in the laboratory. Satish informed the incident to the informant at 02.00 am. The informant rushed to the laboratory. Satish and Yogesh informed about the incident. The informant alongwith these two approached the police station and lodged the report.

3. Learned APP submits that during investigation the role of applicant has been disclosed. According to the prosecution, it is the applicant at whose behest the crime has been committed. However, the learned counsel for the applicant submits that except for the statement of the co-accused there is absolutely no evidence against the applicant. Though the prosecution claims that the part of the amount stolen was given to the applicant, nothing has been recovered from him or at his instance till today.

4. When enquired, learned APP submits that the investigation is almost completed and charge-sheet is likely to be filed soon. He, however, submits that there are criminal antecedence against the applicant.

5. The crime chart indicates that three cases have been registered against the applicant under the Maharashtra Prohibition Act. Thus, there are no serious cases pending against the applicant. In any case, considering the nature of allegations and evidence collected so far, there appears no reason why the applicant should continue incarceration in

jail. He is not amongst the three persons who entered the laboratory and steal the amount. The evidence against him is the statement of the co-accused, which is not admissible evidence.

6. In view of above and considering the nature of allegations against the applicant coupled with presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that no fruitful purpose will be served by keeping the applicant in jail. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

7. The observations made in this order are prima facie and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

8. Resultantly, following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant – Pawan s/o Santosh Vibhute, be released on bail in Crime No.49/2023 registered with Police Station, Washim, District Washim for the offences punishable under Sections 392 and 395 read with Section 34 of the Indian Penal Code, on he executing P.R. Bond in the sum of ₹50,000/- with one or two sureties in the like amount.
- (iii) The applicant shall, at the time of execution of

bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.

(iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(v) The applicant shall cooperate in the investigation and shall attend the Police Station, Washim on first Sunday of every month, till filing of the charge-sheet and after filing of the charge-sheet he shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offence. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(vi) The applicant shall maintain law and order.

(vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

(Anil L. Pansare, J.)

Wagh