

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

CRIMINAL APPLICATION (ABA) NO.242 OF 2023

Chhaya Matadin Prasad

Vs.

The State of Maharashtra, Through Police Station Officer, Police Station, Ballarshah
District Chandrapur

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

Court's or Judge's orders

Mr. R. P. Joshi, Counsel for applicant.
Mr. I. J. Damle, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 16/06/2023

1. The present application is filed by the applicant for grant of anticipatory bail under Section 438 of the Code of Criminal Procedure.

2. The applicant is apprehending arrest at the hands of police as crime is registered on the basis of report lodged by Deepak Kumbhalla on an allegation that present applicant/accused Chhaya Matadin Prasad along with her husband Matadin Babbu Prasad had given him a false assurance of securing job in a Paper Mill and obtained an amount of Rs.2,50,000/- from him. The present applicant had also given false appointment letter to him. When the complainant went to join in the company he came to know that this is a forged appointment letter, therefore, he demanded the amount

from the applicant but she issued a cheque which were also bounced therefore, present report is lodged by him. On the basis of said report, the crime is registered against the present applicant.

3. As per the contention of the present applicant, she is not at all concerned with the alleged offence. In fact, there was one transaction of some land with the informant in the year 2020 which could not be materialized and therefore, applicant and her husband Matadin have returned the amount of Rs.2,50,000/- to the informant. Accordingly, he has given it in writing on stamp paper on 07.07.2021 however, to grab more amount, this false report is lodged against the present applicant. In fact, there was no transaction of promising or providing any employment in any Paper Mill, but only to implicate the present applicant in the false report, this report is lodged. Her husband who is co-accused in the present offence is already released on bail. There are similar allegations against him. Considering that, nothing is to be recovered from the present applicant, hence she be protected by granting anticipatory bail.

4. The said application is strongly opposed by the State on the ground that during the investigation, the investigating agency recorded the statements of various witnesses, and it revealed that present applicant given so many persons on the promise of giving job, therefore,

her custodial interrogation is required and hence the bail application be rejected. It is further contention of the investigating agency that during the statement of one Dhiraj Arya it revealed to that present applicant has allured him for obtaining loan of Rs.50,000/- and for that purpose he has to pay Rs.15000/- and accordingly he had paid Rs.15,000/- and present applicant by misleading him obtaining blank cheque and also obtained signature on blank stamp papers for EMI. Thus, there is *prima facie* material against the present applicant to connect her with the alleged offence and prays for rejection of the application.

5. Heard learned Counsel Mr. R. P. Joshi for the applicant. He submitted that present applicant is implicated in the alleged offence due to the old transaction between the informant and the present applicant and her husband. There is no such promise for giving job in any Paper Mill whatsoever. He further submitted that even taking the allegations as it is though the Investigation Officer has issued various notices to the present applicant, in view of the guidelines issued by the Hon'ble Apex Court in **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. The Investigating Officer is under obligation 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. The notices nowhere reveals that the arrest of the present applicant is required for the investigation purpose. He invited my attention towards the various notices issued to the present applicant from time to time and submitted that none of the notice shows that custodial interrogation of the present applicant is required. Thus, there is no satisfaction of the Investigation Officer for what purpose the arrest of the applicant is required. As investigation agency itself is not sure for what purpose the arrest of the present applicant is required. The applicant is to be protected by granting anticipatory bail and she will abide by all the conditions and will cooperate with the investigation agency.

6. He further placed reliance on **Bimla Tiwari Vs. State of Bihar** reported in **2023 SCC OnLine SC 51** wherein the Hon'ble Apex Court while considering the pre-arrest bail observed that we would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest

bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment. It is further observed in para No.11 by the Hon'ble Apex Court that we would further emphasize that, ordinarily, there is no justification in adopting such a course that for the purpose of being given the concession of pre-arrest bail, the person apprehending arrest ought to make payment. Recovery of money is essentially within the realm of civil proceedings.

7. He submitted that there are similar allegations against the applicant and her husband. Her husband is already released on bail by the Sessions Court. Considering the custodial interrogation of the present applicant is not at all required. The present applicant be protected by granting anticipatory bail.

8. Learned APP Mr. Damle, for the respondent/ State vehemently submitted that the statements of the various witnesses discloses the involvement of the present applicant with the alleged offence. He further submitted that from the said statement, it reveals that the present applicant has obtained the money from the various persons. Not only that the statement of Dhiraj Arya discloses that she has obtained the amount of

Rs.15000/- from him and also obtained the blank cheque from him and therefore, thereafter the said blank cheque are used by issuing to the other persons. Thus, *prima facie* material is sufficiently shows the involvement of the present applicant and her custodial interrogation is required and prayed for rejection of the application.

9. Having heard both the sides and on perusal of the investigation papers it reveals that, crime is registered on the basis of report lodged by Deepak Kumbhalla that present applicant and her husband obtained the amount from him on the promise of providing the employment in one Paper Mill. It is further alleged that she has issued one appointment letter which was forged one. Thus, on the basis of said report, police have registered the offence. During the investigation, the Investigating Officer has recorded the various statements. As per the prosecution, the various witnesses came forward before the Investigating Officer and disclosed that they are also duped by the present applicant and her husband by obtaining the money from him on the promise of giving employment. The learned APP invited my attention towards the statement of Dhiraj Arya. On perusal of the said statement it reveals that said Dhiraj Arya got acquaintance with the husband of the applicant. It was the husband of the applicant who promised him that his wife can assist him to obtain the loan and demanded the amount of Rs.15,000/-. He

further alleged that he has obtained blank cheques and blank stamps from him. Thus, from his statement it is revealed that it was the husband of the applicant who has obtained the amount of Rs.15,000/- as well as the blank cheques and the blank stamps. His further statement reveals that they both have insisted him to sign the cheques and therefore, before handing over the blank cheques signed the same cheques and handed over to them and thereafter, the same cheques are misused. Thus, as per the prosecution, the material i.e. the statement of this Dhiraj Arya sufficiently shows the involvement of the present applicant in the alleged offence. On perusal of the investigation paper it further reveal that, Investigating Officer has issued various notices to the present applicant but none of the notice discloses that custodial interrogation of the present applicant is required and therefore, her physical custody is necessary.

10. As observed by the Hon'ble Apex Court in **Satender Kumar Antil Vs. Central Bureau of Investigation** referred supra the Apex Court while considering the offences punishable up to 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 Court for grant of anticipatory bail is substantially reduce. The Hon'ble Apex Court further

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 to State Government to provide all Police Officers a check list containing specified sub-clauses under Section 41(1)(b)(ii). The police officer 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 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 Hon'ble Apex Court has then held that the failure to comply with the directions aforesaid shall apart from rendering the Police Officers 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. It is further held that non-compliance with Section 41 of the

Code would entitle the accused to grant of bail. The Hon'ble Apex Court in **Satender Kumar's** case (cited supra), further observed that despite directions in **Arnesh Kumar's** case, no concrete steps have been taken to comply with the mandate of Section 41A of the Code, and therefore, the guidelines are issued to deal with the bail applications.

11. The Hon'ble Apex Court further 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 mandatory and accordingly are to be recorded by the Police Officer.

12. The observations further discloses that 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 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 the further detention. Thus, the satisfaction by the Magistrate will have to be reflected in its order. The Hon'ble Apex Court further held that failure to comply with directions shall render the Police Officer concerned liable for departmental action. Thus, the compliance of Sections 41 and 41A of the Code is mandatory.

13. 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. Therefore, Hon'ble Apex Court has observed that even for a cognizable offence an arrest is not mandatory as can be seen from the mandate of the provision under Section 41 under Chapter V of the Code of Criminal Procedure.

14. In the light of the above directions, the Investigating Officer therefore, is under obligation to comply with the said directions and is expected to avoid arresting a person and sending him/her to jail, if it is possible for him to complete the investigation without arresting the accused. By keeping in mind, if the facts of the present case are considered there are similar allegations against the applicant as well as her husband. It is alleged that both have promised the informant and obtained the money from the informant. Though learned APP for the State pointed out the statement of Dhiraj Arya but it also shows that both were present and both have obtained money from him and both have obtained the cheques from him which are misused. The co-accused husband is already released on bail by the Sessions Court. Considering the similar allegations the present applicant is also entitled for bail on the ground of parity. Moreover, considering the aspect that though the Investigating Officer has issued several notices to the present applicant, nowhere the said notices disclose the satisfaction of the Investigating Officer showing why the arrest of the present applicant is required. As observed by the Hon'ble Apex Court that non-compliance with Section 41 of the Code would entitle the accused to grant bail. Considering the communication by the Investigating Officer absolutely there is no compliance of Section 41 of the Code which also entitles the applicant for bail. As observed earlier that custodial interrogation

of the present applicant nowhere reflects from the notices issued to the applicants, the application of the present applicant deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

- (i) The application is allowed.
- (ii) The applicant Chhaya Matadin Prasad is hereby released on bail in the event of her arrest on anticipatory bail on executing PR bond in the sum of Rs.50,000/- with one solvent surety in the like amount.
- (iii) The applicant shall attend Police Station once in a week on Monday between 10.00 a.m. to 1.00 p.m. till filing of the charge-sheet.
- (iv) The applicant shall submit her mobile/phone number along with her address with address proof. Additionally, the applicant shall submit the names of her two nearest relatives along with their address with address proof, before the Investigating Officer.
- (v) The applicant shall not induce, threaten or pressurize any witness who are connected with the alleged crime.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)