

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

CRIMINAL APPLICATION (ABA) NO.249 OF 2023

(Arbaaz s/o Anwar Ali Vs. State of Maharashtra)

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

Court's or Judge's Order

Shri S.N. Singh, Advocate for the applicant.
Shri A.M. Kadukar, APP for the non-applicant/State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JUNE 07, 2023.

Heard.

2. Present application is filed by the applicant for grant of anticipatory bail in the event of his arrest in connection with Crime No.318/2023 registered at police station Ramnagar, Chandapur for the offence punishable under Sections 294, 353 and 506 of the Indian Penal Code.

3. The applicant is apprehending arrest at the hands of the police as one Sudhir Prabhakar Meshram a Branch Manager of State Bank of India, Shastri Nagar Branch, Chandrapur has lodged report on an allegation that on 28/03/2023 at about 1.30 p.m., Service Manager namely Vaibhav Sharad Totade was working in the Bank at that time present applicant Arbaaz Anwar Ali approached to him with request to issue him cheque book. Said Vaibhav Totade has verified his bank balance and informed him that there is no sufficient balance to issue the cheque book. The applicant got annoyed and abused

him and also attempted to cause damage to the property of the Bank. The applicant has obstructed the Service Manager from discharging his official duty, and therefore, the crime was registered against the present applicant.

4. The contention of the applicant is that he is falsely implicated in the alleged offence, in fact he has only requested for issuance of cheque book on which the Service Manager rudely behaved with him. On such conducts and improper behavior of the Service Manager, the applicant demanded the copy of the rules of the Bank. The Branch Manager got annoyed with the same and lodged false report against him. His custodial interrogation is not required and hence he be released on anticipatory bail in the event of his arrest.

5. Learned Additional Public Prosecutor strongly opposed the application on the ground that the present applicant was seen in the CCTV footage which is collected by the Investigating Officer during investigation. The CCTV footage fortifies the allegations made against the present applicant. The physical custody of the present applicant is required as the Investigating Officer has to obtain his photographs to match with the image in CCTV footage, therefore, application deserves to be rejected.

6. Heard learned Counsel for the applicant as well as learned Additional Public Prosecutor. They have reiterated their contentions as per their pleadings.

7. This Court while considering the interim prayer for grant of anticipatory bail has already observed that the Investigating Officer is bound to follow the directions issued by the Hon'ble Apex Court in ***Satender Kumar Antil Vs. Central Bureau of Investigation, [(2022) 10 SCC 51]*** and ***Arnesh Kumar Vs. State of Bihar, [(2014) 8 SCC 273]*** and also to abide by the Standing Order No.3 of 2022 dated 20/07/2022 issued by the Director General of Police, Mumbai.

8. It is further observed by this Court that the Hon'ble Apex Court in above two cases issued directions and laid down a complete mechanism for investigating a crime, where the offence alleged is not punishable for more than seven years.

9. In the case of *Arnesh Kumar* (supra), the Hon'ble Apex Court, while considering the offences punishable up to 7 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. It is further held that Police Officer, before arresting, must put a question to himself; why arrest? Is it really required? What purpose it will serve? and 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 further directed 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 Hon'ble 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.

10. In the case of Satender Kumar (supra), the Hon'ble Apex Court further considered the scope of Section 41 of the Code and held that even for a cognizable offence, an arrest is not mandatory as can be seen from the mandate of the provision.

11. If the officer is satisfied that a person has committed a cognizable offense, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured.

12. Thus, the Police Officer has to first ascertain the requirement of the arrest of the accused when the offence is punishable with imprisonment for a term which may less than seven years or which may extend to the said period.

13. Admittedly, in the present case, the only objection raised by the State is that the photograph of the present applicant is to be obtained to match the image which was seen in the CCTV footage. For obtaining the photograph, the physical custody of the present applicant

is not at all required, and therefore, the arrest of the present applicant is not necessary.

14. Considering that the physical custody of the present applicant is not required, however, the cooperation in the investigation is expected from the present applicant. Hence, the application deserves to be allowed by imposing certain conditions. Hence, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant – Arbaaz s/o Anwar Ali in the event of arrest in Crime No.318/2023, registered with Police Station, Ramnagar, Chandrapur, for the offences punishable under Sections 294, 353 and 506 of the Indian Penal Code, 1860, be released on bail on furnishing P.R. Bond in the sum of 25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iii) The applicant shall attend Police Station, Ramnagar, Chandrapur, on every Monday between 10.00 a.m. to 1.00 p.m. for investigation purpose and shall cooperate in the investigation, till filing of the charge-sheet.

(iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the

facts of the case and shall not tamper the prosecution.

(v) The applicant shall submit his cell phone number and detail address along with the address proof before the Investigating Officer.

(URMILA JOSHI-PHALKE, J.)

**Divya*