



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

CRIMINAL APPLICATION (ABA) NO.284 OF 2023

(Smt. Leena w/o Narendra Tayade Vs. The 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

Mr. C.S. Kaptan, Sr. Advocate for the applicant.
Ms T.H. Udeshi, APP for the State.
Mr. S.U. Bhuyar, Advocate for Assist to Prosecutor.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- NOVEMBER 30, 2023.

Heard.

2. By this application, the applicant is seeking anticipatory bail in Crime No.364/2023 registered with Police Station Gadgenagar, Amravati for offences punishable under Sections 406, 420, 461, 471, 506, 500 and 501 of the Indian Penal Code.

3. The applicant is apprehending arrest at the hands of police as crime is registered against her on the basis of report lodged by Jayprakash Narayanrao Bankar wherein it is alleged that he was acquainted with the present applicant, present applicant has introduced him and his wife with one Rohan Bhende and assure that said Rohan Bhende will help them to admit their son to the medical course. She further assured that this Rohan Bhende will definitely help them to secure the admission 100% in the said medical college. Accordingly, they met said Rohan Bhende. Said Rohan Bhende assured present

applicant as well as the informant and his wife and demanded Rs.25,00,000/- for said admission. The informant has paid the said amount at the house of the present applicant. Subsequently, said co-accused Rohan Bhende could not secure the admission for their son. Therefore, they have demanded the amount as Rohan Bhende could not secure the admission as assured by him. He issued the cheque which was deposited returned back with the endorsement that funds insufficient. On the basis of said report, crime is registered against the present applicant.

4. Learned Senior Counsel Mr. Kaptan submitted that as far as the allegations against the present applicant is concerned, only she acted as a mediator between Rohan Bhende and the informant. At the most, her role is to the extent that she introduced the informant and his wife to said Rohan Bhende. There is no allegation that she has accepted the amount on behalf of said Rohan Bhende. Considering the allegation against the present applicant admittedly she has not received any amount. On the contrary, the allegation shows that said Rohan Bhende not only assured the informant but also assured to the present applicant. Her statement was also recorded which also disclosed the similar facts. As nothing is to be recovered from the present applicant, the custodial interrogation is not required. He further submitted that subsequently after thought the statements are given by the informant and his wife to the extent that some amount is also paid to the

present applicant however, at the initial stage there was no such allegations. As far as the custodial interrogation is concerned which is not required, and therefore, the applicant be protected by granting anticipatory bail.

5. Learned Additional Public Prosecutor strongly opposed the application on the ground that said Rohan Bhende has paid Rs.20,00,000/- to the present applicant. Her involvement is revealed from the investigation papers. Custodial interrogation is required as amount is to be recovered and prays for rejection of the application.

6. Learned Counsel for the informant endorsed the same contention and submitted that the Investigating Officer has collected the report regarding the messages which shows that the present applicant is also involved in the alleged crime with intent to misappropriate the amount, she has introduced the informant with the co-accused Rohan Bhende and obtained the money. The money is to be recovered from her, and therefore, her custodial interrogation is required and prays for rejection of the application.

7. Having heard the learned Senior Counsel for the applicant, learned Additional Public Prosecutor for the State and learned Counsel for the informant. Perused the investigation papers. Undisputedly, there is no allegation in the FIR against the present applicant that either the present applicant demanded the money or she has accepted money from the informant or his wife. On the contrary, the recitals of the FIR shows that the co-accused

not only assured the informant but also assured the present applicant regarding the admission of the son of the informant. The statement of the present applicant is also recorded. She narrated the similar incident before the Investigating Officer. The Investigating Officer has collected the data of exchange of the messages from which also it reveals that the present applicant was taking efforts for the recovery of the amount of the informant from co-accused Rohan Bhende. Thus, there is no direct material against the present applicant to show that she has either demanded the amount or received the amount from the informant. On the contrary, the recitals of the FIR shows that it was the co-accused who has issued the cheque of the entire amount which was dishonored due to funds insufficient.

8. The offences alleged are not punishable with imprisonment more than seven years. The guidelines issued by the Hon'ble Apex Court in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation and another [(2022) 10 SCC 51]*** wherein the Hon'ble Apex Court held that even for a cognizable offence, an arrest is not mandatory as can be seen from the mandate of Section 41 of the Code of Criminal Procedure. If the Officer is satisfied that a person has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years, or which may extend to seven years 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.

9. Section 41 Cr.P.C. mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. It is further held by the Hon'ble Apex Court that the consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offense. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.

10. In view of the above observations and the material which is collected during the investigation, I am satisfied that there is no *prima facie* case against the present applicant. At the most, the role attributed to the

present applicant is that she introduced the co-accused Rohan Bhende to the informant. Considering the same, her custodial interrogation is not required. As far as the recording of the statements or other interrogation is concerned some conditions can be imposed on her. In view of that the application deserves to be allowed by imposing certain conditions. Hence, I proceed to pass the following order :

- (i) The application is allowed.
- (ii) In the event of arrest, the applicant – Smt. Leena w/o Narendra Tayade in connection with Crime No. 364/2023 registered with Police Station Gadgenagar, District Amravati, for offences punishable under Sections 406, 420, 461, 471, 506, 500 and 501 of the Indian Penal Code, be released on anticipatory bail on furnishing PR Bond in the sum of Rs.25,000/- with one surety in the like amount.
- (iii) The applicant shall attend Gadgenagar Police Station as and when called by the Investigating Officer for the investigation purpose.
- (iv) The applicant shall furnish her Cell phone number and address with address proof.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

11. The application is disposed of.

12. The trial Court shall not influence the observation made by this Court as it is only for the purpose of bail considerations.

(URMILA JOSHI-PHALKE, J.)

**Divya*