



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

CRIMINAL APPLICATION (ABA) NO.288 OF 2023

Bhupendra s/o Pransingh Thakur

Vs.

State of Maharashtra, Through its Police Station Officer, City Kotwali Police Station,
District Amravati

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

Court's or Judge's orders

Mr. S. S. Ghate, Advocate for applicant.
Ms. M. A. Barabde, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 01/12/2023

1. By this application, the applicant is seeking pre-arrest bail in respect of Crime No.126/2023 registered with Police Station Kotwali, District Amravati for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

2. The applicant is apprehending arrest at the hands of police, as FIR is lodged against him on an allegation that he along with co-accused have duped the informant by obtaining Rs.1,70,000/- by promising the informant that applicant will recommend him to take him in the National team of Kabaddi. But as per the assurance, the applicant has not recommended the informant.

3. Learned Counsel Mr. Ghate for the applicant submitted that present applicant entered into an agreement with Anand Mahadevji Shinde who is the father of the informant and by the said agreement father of the informant has received the amount of Rs.1,70,000/- on 29.03.2022. The order passed by the trial Court shows that as per the reply filed before the trial Court, the father of the informant was present on his duty on 29.03.2022 and he has not received the said amount. The agreement which is on record indicates that the father of the informant has received the amount. It also bears the signature of the father of the informant. There is no allegation in the FIR that the signature of the father is a forged signature. He further submitted that considering the entire recitals of the FIR, custodial interrogation of the present applicant is not required and therefore, he was protected by granting ad-interim protection. As per the condition imposed, he cooperated with the Investigating agency. Now, his custody is not required and therefore, he be protected.

4. In support of his contention he placed reliance on **Md. Asfak Alam Vs. State of Jharkand**, reported in **2023 SCC OnLine SC 892** and **Satender Kumar Antil vs Central Bureau Of Investigation and another** reported in **(2022) 10 SCC 51** wherein it is held by the Hon'ble Apex Court that even for a cognizable offence, an arrest is not mandatory as can be seen from the mandate of Section

41 of Cr.P.C. 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 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 offence, and there is a necessity for an arrest. The Hon'ble Apex Court further held that Section 41 of 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. Similarly, the police officer shall record reasons when he/she chooses not to arrest. The consequence of non-compliance with Section 41 of Cr.P.C. shall certainly inure to the benefit of the person suspected of the offence. It is further held that any non-compliance would entitle the accused to a grant of bail.

5. Learned Counsel for the applicant submitted that here in the present case, the applicant has cooperated with the Investigating agency and the Investigating Officer has not put forth his satisfaction by the arrest of the present applicant is required. As there is no compliance under Section 41 of Cr.P.C., applicant is entitled for the protection by granting him anticipatory bail.

6. Per contra, learned APP vehemently submitted that an amount of Rs.1,70,000/- is yet to be recovered. The original agreement is in the custody of the applicant and therefore, his custodial interrogation is required and prays for rejection of the application.

7. Having heard the learned Counsel for the applicant and learned APP for the State. Perused the investigation papers. On perusal of the case diary, it reveals that the Investigating Officer has not recorded his reasons why the arrest of the present applicant is required. It further reveals that the Investigating Officer has already recorded the relevant statements of the witnesses. From the agreement placed on record by the applicant, it reveals that the amount of Rs.1,70,000/- is already handed over to the father of the informant. Considering the observations and guidelines issued by the Hon'ble Apex Court in **Satender Kumar Antil** (supra) as there is non-compliance of Section 41 of Cr.P.C. would entitle the applicant/accused for the said protection, in view of that the application is allowed. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) In the event of the arrest in Crime No.126/2023 registered with Police Station Kotwali, District Amravati for the offence punishable under Section 420 read with Section

34 of the Indian Penal Code, the applicant **Bhupendra s/o Pransingh Thakur** be released on bail on furnishing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend Police Station as and when required for the investigation purpose.

(iv) The applicant shall not induce, threat or promise any other witnesses who are acquainted with the facts of the case and so also not to tamper the evidence.

(v) The applicant shall furnish his cell phone number and address with the address proof.

(URMILA JOSHI-PHALKE, J.)