

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

CRIMINAL APPLICATION (ABA) NO.349 OF 2023
(Naresh s/o Ashokrao Deshmukh 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.V. Deshmukh, Advocate for the applicant.
Shri A.M. Kadukar, APP for State.
Shri Abdul Subhan, Advocate for assist to Prosecutor.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JUNE 27, 2023.

Heard.

2. Present application is filed for grant of anticipatory bail in the event of arrest of the applicant in connection with Crime No.209/2023 registered at police station Chandur Bazar, District Amravati for the offence punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code.

3. The applicant who is the Stamp Vendor is apprehending his arrest at the hands of police as crime is registered on the basis of report lodged by Manoj Ghanshyamdas Motwani against the present applicant as well as other co-accused on an allegation that he along with his three partners namely Deepak Detaram Motwani and Indrajeet Prahlad Motwani and Ashok Mahadeorao Bhende have laid down the two layouts in the land held by them bearing Survey No.18/3 and 18/3A. The said layouts were named as Mauli Nagari No.1 and Mauli

Nagari No.2 respectively. Out of the total 68 plots in Mauli Nagari No.1 they themselves have sold 43 plots and 25 plots were remaining. In the Mauli Nagari No.2 out of 57 plots, the informant has sold 20 plots to different customers and 37 plots where remaining. The informant have appointed accused No.1 – Nilesh @ Jonty Viragade on site for searching the buyers and purchasers, for the said remaining 62 plots. However, the co-accused – Nilesh @ Jonty Vairagade in collusion with the other co-accused persons have sold the plots by executing “isar-chitti” with several purchasers. As far as the allegation in the First Informant Report against the present applicant is concerned he is the Stamp Vendor and sold the stamp papers to other co-accused to assist them to execute “isar-chitti” with several purchasers. As per the allegations, the applicant who is the Stamp Vendor shared common intention with the other co-accused to cheat the informant and the other parties.

4. The contention of the present applicant is that he is working as a Stamp Vendor and the other co-accused have only purchased the stamps from him otherwise he is not at all concerned with the alleged offence. Nothing is to be recovered from him. He is not the beneficiary of the said transaction. His custody is not required for the investigation purpose and hence, anticipatory bail granted to him be confirmed.

5. Said application is strongly opposed by the State on the ground that there is a *prima facie* material

against the present applicant to connect him with the alleged offence. The investigation is still in progress. The custodial interrogation of the present applicant is required as the Investigating Agency has to interrogate with the present applicant. The Investigating Agency has already seized the stamp papers sold by the present applicant to the accused persons. Thus, there is a link between the present applicant and the other co-accused, and therefore, the application deserves to be rejected.

6. Heard learned Counsel for the applicant. He reiterated the contention and submitted that the applicant has already submitted six registers to show the transaction regarding the sale of the stamps and the Investigation Agency has already seized the stamp papers sold by the present applicant to the other co-accused, therefore, custodial interrogation of the present applicant is not required. As far the interrogation is concerned applicant is ready to cooperate with the Investigating Agency.

7. Learned Additional Public Prosecutor reiterated the contention and opposed the application on the ground that the interrogation of the present applicant is required.

8. Having heard the learned Counsel for the applicant and the learned Additional Public Prosecutor for the State and after considering the grounds raised by the applicant, it is necessary to see whether the custodial interrogation of the present applicant is required. Admittedly, the alleged offences are not punishable with

imprisonment more than 7 years. Now it is well settled by the judgement of the Honourable Apex Court in the case of *Satender KumarAntil Versus Central Bureau Of Investigation & Anr. [2022 (10) SCC 51]* wherein the Hon'ble Apex Court held that Section 41 under Chapter-V of the Code of Criminal Procedure deals with arrest of the persons. Even for a cognizable offence, an arrest is not mandatory as can be seen from the mandate of the provision. 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. Such necessity is be drawn to prevent committing of any further offence, 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. On the scope of objective and Section 41 and Section 41-A, the Hon'ble Apex Court by referring the

judgment in the case of *Arnesh Kumar Vs State of Bihar [2014 (8) SCC 273]* held that from the plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

10. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further required the police officer to record the reason in writing for not making the arrest. In pith and core, the police office before arrest 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 as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of the Code of Criminal Procedure.

11. In the light of the abovesaid observation and the investigation papers, it reveals that the incriminating material i.e. the stamp papers which are sold by the present applicant to the other co-accused are already seized by the Investigating Agency.

12. It is submitted that by the learned Counsel Shri Deshmukh that the registers showing the transactions of selling of the stamp is already submitted by the present applicant before the Sub-Registrar, therefore, custodial interrogation of the present applicant is not at all required. As far as the aspect of the interrogation is concerned the physical custody of the present applicant is not required. The Investigating Officer has also not put in writing the reasons why the custodial interrogation of the present applicant is required.

13. In view of the observation of the Honourable Apex Court the Investigating Officer has to satisfy himself

regarding the need of the arrest of the applicant and he should satisfy that such arrest is necessary to prevent such person from committing any further offence. His satisfaction is also required to show that the arrest of the applicant/accused is required for investigation purpose. From the investigation papers, no such satisfaction is recorded by the Investigating Officer.

14. In view of the above reasons recorded, the application deserves to be allowed by imposing certain conditions.

(i) The application is allowed.

(ii) In the event of arrest, the applicant – Naresh s/o Ashokrao Deshmukh in connection with Crime No.209/2023 registered at police station Chandur Bazar, District Amravati for the offence punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code, be released on anticipatory bail on executing P.R. Bond in the sum of 25,000/- (Rs. Twenty five thousand) with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned police station on every Sunday between 10.00 a.m. to 1.00 p.m. till filing of the charge-sheet and shall cooperate with the Investigating Agency.

(iv) The applicant shall furnish his cell phone number and address along with his address proof.

(v) The applicants 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 evidence.

(URMILA JOSHI-PHALKE, J.)

**Divya*