



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

CRIMINAL APPLICATION (ABA) NO.365 OF 2023
(Bharat Ramesh Vaswani 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. S.R. Agrawal, Advocate for the applicant.
Ms T. Udeshi, APP for the non-applicant/State.
Mr. B.D. Sachdev, 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 the event of his arrest in connection with Crime No. 240 of 2023 registered with Jaripatka Police Station for the offence punishable under Section 420 of the Indian Penal Code.

3. Learned Counsel for the applicant submitted that the applicant is apprehending his arrest at the hands of the police as informant Ghansham Aasandas Khemani has lodged report against the present applicant on an allegations that he is running the shop under the name and style as "Prince Collection Sadguru Mobile". In the year 2021 when he approached to the Zavron Finance Company for seeking finance to obtain the loan for purchasing the Laptop, at the relevant time, he came to know that some loan amount is outstanding against him. On due inquiry it reveals to him that the present applicant

has obtained some documents from him on account of execution of agreement and misused the said documents and obtained the loan in his name.

4. Learned Counsel further submitted that even assuming the allegation as it is, the nature of the dispute is of civil nature. The custodial interrogation of the present applicant is not required. Now, the Investigating Officer has already recorded the relevant statements. In view of that the interim protection granted to the present applicant be confirmed.

5. Learned Additional Public Prosecutor strongly objected the application on the ground that considering the *modus operandi* of the present applicant, his custodial interrogation is required to interrogate with him.

6. Moreover, the informant is not the only person who was cheated but there are several persons and therefore, custodial interrogation of the present applicant is required and prays for rejection of the application.

7. Learned Counsel Mr. Sachadev for the informant also endorsed the same contention and submitted that considering the intention of the present applicant that with intention to cheat the informant he obtained the loan and misused the same. The application deserves to be rejected. He placed his reliance on ***Ramesh Kumar Vs. The State of NCT of Delhi [2023 LiveLaw (SC) 496]*** wherein it is observed by the Hon'ble Apex Court that in the context of grant of bail, all such conditions that

would facilitate the appearance of the accused before the investigating officer, unhindered completion of investigation and safety of the community assume relevance. However, inclusion of a condition for payment of money by the applicant for bail tends to create an impression that bail could be secured by depositing money alleged to have been cheated. The Hon'ble Apex Court further held that the High Courts and the Sessions Courts not to be unduly swayed by submissions advanced by counsel on behalf of the accused in the nature of undertakings to keep in deposit/repay any amount while seeking bail under section 438 of the Cr.PC.

8. Having heard the learned Counsel for the applicant and learned Additional Public Prosecutor for the State and learned Counsel for the informant. Perused the First Information Report and it reveals that the dispute between the parties is of a civil nature. As far as the custodial interrogation of the present applicant is concerned, is not required. Admittedly, the crime is registered against the present applicant under Section 420 of the Indian Penal Code for which punishment is provided which may extend up to seven years. In view of the directions of 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.

9. In view of the above directions of the Hon'ble Apex Court here the Investigating Officer has not placed on record any material to show that why the arrest of the present applicant is required. After interim protection granted to the present applicant, he is cooperated with the Investigating Agency. His custodial interrogation appears to be not required. Considering that the nature of the dispute is of civil nature. The material investigation i.e. recording of the statements of the relevant witnesses is already completed. In view of that the interim protection granted to the present applicant deserves to be confirmed. Accordingly, I proceed to pass the following order :

(i) In the event of arrest in respect of Crime

No. 240 of 2023 registered with Jaripatka Police Station for the offence punishable under Section 420 of the Indian Penal Code, the applicant – Bharat Ramesh Vaswani is hereby released on anticipatory bail on executing P.R. bond of Rs.25,000/- with one solvent surety of the like amount.

(ii) The applicant shall submit his cellphone number and address with the address proof.

(iii) The applicant shall further submit the name of his two relatives and their address proof.

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

(v) The applicant shall not tamper, induce and pressurize any witnesses who are concerned with the crime in question.

(URMILA JOSHI-PHALKE, J.)

**Divya*