

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

CRIMINAL APPLICATION (ABA) NO.464 OF 2023

Susanta s/o Mukunda Datta

Vs.

State of Maharashtra, through Police Station Officer, Police Station, Wadi, Nagpur and
another

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

Court's or Judge's orders

Mr. Y. D. Shukla, Advocate for applicant.
Mr. S. M. Ghodeswar, APP for respondent /State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 01/08/2023

1. The present application is filed for anticipatory bail in the event of arrest in connection with Crime No.169/2023 registered with Pahal Police Station, Bhubaneswar UPD, Odisha for the offence punishable under Sections 420 and 506 of the Indian Penal Code and Section 25 Arms Act.

2. The applicant is apprehending arrest at the hands of police as he has received the notice of Pahal Police Station and he is called for interrogation purpose. As per contention of the applicant, he is running fabrication work under the name and style "D and G Enterprises" from Plot No.72, near Bharat Apartment, Amravati Road, Wadi, Nagpur. It is further contention of the applicant that he is having apprehension that FIR is registered in connection with the goods supplied to M/s

Green Grow Company through Managing Partner Mr. Satyabadi Mishra of Swagat Vihar, Rudrapur, Bhubaneswar. It is further submitted that the applicant has dispatched 21 science equipment on 03.02.2023 amounting to Rs.7,95,190/- through Shriyansh Roadlines, Khadgaon Road, Wadi Nagpur, vehicle No.MH-49/AT 8466 to M/s Green Grower, Raurkela Odisha. A copy of Tax invoice is also filed along with the application. It is further contention of the applicant that the online receipt of said items dispatched dated 03.02.2023 supplied by the transporter is also filed with this application. The said items were duly received by the said buyer. However, the applicant is having apprehension that the buyer has lodged report and therefore, he is having apprehension of arrest. Therefore, the present application is filed for transit anticipatory bail.

3. The said application is opposed by the learned APP by waiving the notice for the State. Admittedly, from the notice the allegations are not reflected. However, the crime is registered under Sections 420 and 506 of the Indian Penal Code and under Section 25 of Arms Act. The alleged offences are imprisonment less than seven years.

4. As observed by the Hon'ble Apex Court in **Satender Kumar Antil Vs. Central Bureau of Investigation**

reported in **(2022) 10 SCC 51**, wherein it is held 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. Such necessity is drawn to prevent the 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.

5. 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. There is no requirement of the aforesaid procedure when the offence alleged is more than seven years, among other reasons. 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. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision.

6. In view of the above observations of the Hon'ble Apex Court the investigating officer has to satisfy himself whether the arrest of the present applicant is required or not by recording his presence. Section 41 of Cr.P.C. notice nowhere discloses regarding the satisfaction of the Investigating Officer showing the arrest of the present applicant is required. Considering the statement made by the applicant, the crime is registered out of the business transaction, apparently it reveals that the dispute is of civil nature and the immediate custody of the present applicant is not required. Considering the same, the applicant can be protected by granting transit anticipatory bail for two weeks. In view of that, I proceed to pass following order.

ORDER

- (i) The application is allowed.

(ii) The applicant **Susanta s/o Mukunda Datta** is released on anticipatory bail in the event of his arrest in connection with Crime No.169/2023 registered with Pahal Police Station, Bhubaneswar UPD, Odisha for the offences punishable under Sections 420 and 506 of the Indian Penal Code and Section 25 Arms Act, on executing of PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount, **for two weeks**.

(iii) The applicant shall attend concerned Police Station as and when required and shall cooperate with the investigating agency.

(iv) The applicant shall approach to the concerned Court for further relief.

(v) The applicant shall not induce, threat or promise any witnesses who are connected with the alleged crime.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate