



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

CRIMINAL APPLICATION (ABA) NO.652 OF 2023

Raju s/o Shivratan Jaiswal

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Maregaon,
District Yavatmal

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

Court's or Judge's orders

Mr. S. B. Gandhe, Advocate for applicant.
Ms. Deepa Charlewar, APP for respondent No.1/State.
Mr. R. D. Bhuibhar, Advocate for assist to prosecution.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 06/12/2023

1. By this application, the applicant is seeking pre-arrest bail in connection with Crime No.440/2023, registered with Police Station Maregaon, District Yavatmal, 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 accusation made against him on the basis of report lodged by the informant, on an allegation that the accused persons in furtherance of their common intention hatched the conspiracy and thereby agreed to sell/partnership the liquor licence to the informant for the amount of Rs.35,00,000/-. It is further alleged that the said amount has been transferred by selling the agriculture field standing in the name of the father of the informant. The said liquor licence was not transferred

on the name of the complainant and on enquiry, it revealed to the complainant that the said liquor licence was already transferred on the name of some other person.

3. Learned Counsel Mr. Gandhe for the applicant submitted that as far as the role of the present applicant is concerned, it is only to the extent that he introduced the complainant with the other co-accused. The present applicant has not received any amount of the complainant. Thus, custodial interrogation of the present applicant is not required and taking into consideration the applicant was protected by granting interim protection.

4. The said application is strongly opposed by the State on the ground that the custodial interrogation of the present applicant is required, as during investigation, it reveals that present applicant is the person who introduced the informant with the other co-accused and since inception there was intention and with that intention the other co-accused obtained the huge amount from the complainant and subsequently not transferred the licence in the name of complainant and prays for rejection of the application.

5. Learned Counsel Mr. Bhuihar for the original complainant endorsed the same contention and additionally submitted that since inception the present applicant was knowing that the licence was already transferred to the third person then also he introduced

the complainant with the co-accused and the co-accused induced the complainant to pay them amount for transfer of the said licence. Considering the intention of the complainant and the huge amount which is collected by the informant by selling his land. The prayer for anticipatory bail deserves to be rejected.

6. Having heard learned Counsel for the applicant and learned APP for the State and learned Counsel for the informant. Perused the recitals of the FIR and the investigation papers. From the investigation papers it reveals that as far as the role of the present applicant is concerned, he has introduced the co-accused to the complainant and the co-accused induced the complainant to handover the amount for transfer of the licence. As far as the contention of the State and the contention of the informant that the present applicant was knowing that the licence was already transferred, even if, taken into consideration the custodial interrogation of the present applicant is not required. Now, it is settled 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 (Cr.P.C.).

7. The Hon'ble Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation**, reported in (2022) 10 SCC 51 have laid down the guidelines as far as the arrest in cognizable offence is concerned. As per the said guidelines, 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. Section 41 of Cr. P.C. mandates the police officer to record his reasons in writing while making the arrest.

8. In view of that, in the present case no satisfactory grounds are placed before the Court to show that arrest of the present applicant is required. Considering the role attributed to the present applicant, his custodial interrogation is not required. In view of that, the protection granted to the present applicant by way of granting ad-interim relief deserves to be confirmed. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The applicant **Raju s/o Shivratan Jaiswal** be released on anticipatory bail in the event of his arrest, in connection with Crime No.440/2023 registered with Police Station Maregaon, District Yavatmal for the offence punishable under Section 420 read with Section

34 of the Indian Penal Code, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

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

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

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

(URMILA JOSHI-PHALKE, J.)