



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

CRIMINAL APPLICATION (BA) NO.972 OF 2023
(Pritam s/o Pradeep Hivare 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

Mr. D.V. Chauhan, Advocate for the applicant.
Mr. N.R. Rode, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- DECEMBER 18, 2023.

Heard.

2. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.289/2023, registered with Police Station Wardha city for the offence punishable under Sections 489-B, 489-C and 120-B of the Indian Penal Code.

3. The applicant is arrested on 16/03/2023. Since then he is behind bar.

4. As per the allegations in the report lodged by Dinesh Ramesh Tumane, Police Officer that he received the secret information that some persons are having in possession of the counterfeit currency notes, and therefore, he proceeded by private vehicle and near Gopuri Gitai Temple after sometime one motorcycle came there. He suspected about his behaviour, and therefore, he was taken into custody. During his personal search 94

counterfeit currency notes are seized by the police by drawing the panchnama.

5. During interrogation with him, he disclosed that the said currency notes are handed over to him by the present applicant and other co-accused by obtaining it from the person from Delhi. Thereafter he visited the house of the accused namely Nikhil Ashwinrao Lonare. The present applicant was found possessing 46 counterfeit currency notes. Accordingly, said currency notes are also seized and from the other co-accused also the fake currency notes are seized. During investigation, it further revealed to him that one person namely Omprakash Bhagwan Lalwani who is from the Indore (MP) who alleged to be manufactured the said fake currency notes. On the basis of said report, police have registered the crime against the present applicant.

6. Learned Counsel for the applicant submitted that it is pertinent to note that before arresting and before lodging the FIR, the panchanama under Section 27 of the Indian Evidence Act, 1872 on the basis of the memorandum statement of the co-accused Nikhil Ashwinrao Lonare is drawn by the Investigating Agency. As far as the allegation against the present applicant is concerned is only to the extent that he was possessing the said counterfeit currency notes. There is no allegation that either he has circulated the same or used it as a genuine one. Therefore, only Section 489C is applicable against the

present applicant which is bailable one. The other co-accused are already released on bail against whom the similar allegation is levelled by the prosecution. Considering the same, the bail application of the present applicant deserves to be allowed.

7. In support of his contention, he placed reliance on *Sandip Vasant Naphade Vs. State of Maharashtra [2021 SCC OnLine Bom 8974]* and *Rahul Dinkar Vachkal Vs. State of Maharashtra [2020 SCC OnLine Bom 11552]*.

8. Learned Additional Public Prosecutor strongly opposed the application on the ground that the applicant was found in possession of the said counterfeit currency notes. If he is released on bail, there is every likelihood of committing similar type of offence. The applicant and other co-accused are found in possession of fake currency notes worth of Rs.94,000/-. Considering the same, the application deserves to be rejected.

9. After hearing the learned Counsel for the applicant and learned Additional Public Prosecutor for the State. Admittedly, as per the recitals of the FIR only allegation against the present applicant is that he was found in possession of the said fake currency notes. There is absolutely no allegation against the present applicant that either he was involved in manufacturing or using the said currency notes as the genuine one. Admittedly, *mens rea* is a necessary ingredient of the offences under Section

489B and 489C of the IPC which says that :

“knowing or having reason to believe the currency-notes or bank-notes are forged or counterfeit.

Thus, the knowledge of the present applicant as regards to the currency notes that these are the fakes is essential. Without the aforementioned *mens rea* selling, buying or receiving from another person or otherwise trafficking in or using as genuine, any forged or counterfeit currency-note or bank-note, is not enough to constitute the offence under Section 489B of IPC. So also possessing or even intending to use any forged or counterfeit currency notes or bank notes is not sufficient to make out a case under Section 489C of the IPC in the absence of *mensrea*. Section 489B relates to using as genuine, forged or counterfeited currency notes or bank notes. The object of legislature in enacting this Section is to restrain the circulation of the forged notes by punishing or persons who knowing or having reasons to believe the same to be forged to do any act which would lead to their circulation. This Court in the case of *Rahul Dinkar Vachkal* (supra) has already explained the terminology i.e. the use of the words "knowing or having reason to believe the currency notes are forged or counterfeit" implicitly contemplate *mensrea*. In absence of *mensrea*, selling, buying or receiving from any other person, or using as genuine, forged or counterfeit currency-notes

or bank-notes is enough to constitute an offence under Section 489B of the IPC.

10. In the present case, except the allegation that the present applicant was found in possession of the currency notes there is no other allegation. The co-accused who are also arrested on the same allegations are released on bail. Even as per the prosecution case, it was the co-accused who found along with the printing materials and the allegation of manufacturing is against the co-accused. The applicant is not concerned with the printing of those notes. At the highest the case against the present applicant is made out under Section 489C of the IPC which is bailable. In view of that the application deserves to be allowed by imposing certain conditions. Hence, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant – Pritam s/o Pradeep Hivare in connection with Crime No.289/2023, registered with Police Station Wardha city for the offence punishable under Sections 489-B, 489-C and 120-B of the Indian Penal Code, be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.

(iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

11. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*