



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

CRIMINAL APPLICATION (BA) NO.1087 OF 2023
(Shashank s/o Rajesh Agrawal 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. A.M. Jaltare, Advocate for the applicant.
Ms Kavimandan, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- DECEMBER 20, 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.308/2023, registered with Police Station Bajaj Nagar, Nagpur for the offence punishable under Section 489-B and 489-C of the Indian Penal Code.

3. The applicant is arrested on 01/11/2023. Since then he is behind bar.

4. The accusation against the present applicant is on the basis of report lodged by Gaurav Subhashrao Tarale who is serving as a Deputy Manager in Kotak Mahindra Bank, Nagpur. As per his allegation, on 25/09/2023 when he was working as a Cashier one person by name Ajinkya Ajay Chandrayan came to the bank to deposit the amount of Rs.1,00,000/-. He counted the said amount and also verified the genuineness of said currency. On the verification, it revealed to him that 14

currency of Rs.500/- are the fake currencies, therefore, he informed to the police and lodged the report.

5. During investigation the Investigating Officer has recorded the statement of Omar Sahil Rahim who disclosed that on 27/09/2023, Ajinkya disclosed to him that these 14 fake currency notes are given to him by the present applicant. The statement of the Ajinkya is also recorded from which it reveals that said Ajinkya has suspected that fake 14 currency notes might have given to him by the present applicant. Except this statement there is no material against the present applicant as per the contention of learned Counsel for the applicant. He further submitted that considering that except the statement of the Ajinkya and Omar Rahim, no other material to connect the present applicant. Nothing is recovered from the present applicant. Since the date of arrest, the applicant is behind bar. Section 489-B is not applicable as the applicant is neither sells nor buys or nor received any fake currency notes and not used the said currency notes as genuine. Even 489-C is also not applicable as nothing is seized from the present applicant, therefore, possession of forged and counterfeit currency notes is not made out against the present applicant.

6. Learned Additional Public Prosecutor strongly opposed the application on the ground that the statement of both the witnesses shows the involvement of the present applicant in the alleged offence. Investigation is

still in progress and in view of that application deserves to be rejected.

7. Having heard the learned Counsel for the applicant and learned Additional Public Prosecutor for the State. Perused the investigation papers. Admittedly, except the statement of Ajinkya who had been to the bank to deposit the amount and the statement of Omar Rahim, no other material is collected during the investigation. If the statement of Ajinkya who had been to the bank to deposit the amount and it revealed that 14 currency notes are fake currency notes, is not sure whether the said notes are handed over to him by the present applicant. His statement shows that it might be given to him by the present applicant and the statement of Omar is on the basis of information given to him by the said Ajinkya. It is well settled that for attracting the Section 489-B and 489-C *mens rea* is a necessary ingredient which is absent here.

8. Merely on the basis of statement, the applicant is implicated. Nothing is recovered from him. Even the recovery of the said fake currency notes is not enough to constitute the offence under Section 489-B of the IPC. As nothing is recovered from the present applicant therefore, Section 489-C is also not applicable against the present applicant. Considering the nature of the statements, *prima facie* case is not made out against the present applicant. At this stage, 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 – Shashank s/o Rajesh Agrawal in connection with Crime No.308/2023, registered with Police Station Bajaj Nagar, Nagpur for the offence punishable under Section 489-B and 489-C 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.

(iv) Bail in Lower Court.

9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)