



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

CRIMINAL APPLICATION (ABA) NO. 22 OF 2024

Pranil Pradip Bhoite 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. Shardul Shinde, counsel for applicant.

Mr. S.S. Hulke, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 26/09/2024.

1. Apprehending the arrest at the hands of police in connection with Crime No.733/2023, registered with Police Station Ramnagar, District Wardha for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, the applicant approached this Court for grant of pre-arrest bail.

2. The crime is registered on the basis of a report lodged by Sushil Babraoji Thote, on an allegation that the applicant, along with his friend, namely Shri Gopichand Mate, in terms of investment met with one Indrajit Chudiwala and Chandrakant Dunala, whereby they informed about the scheme related to RBI. It is further alleged that the complainant was insisted to invest the amount on the investment that he would get the profit from the investment of the amount. In view of that, the complainant has invested the amount, but he has not received returns from the investment, and thereby he is

duped. On the basis of the said report, police have registered the crime against the present applicant.

3. Heard learned counsel for the applicant who submitted that, as far as the directions of this Court are concerned, being the offence punishable with imprisonment less than seven years, notice be issued to the present applicant under Section 41, but no notice is issued. He submitted that, as far as custodial interrogation is concerned, which is not required. There is no compliance in view of the directions of the Hon'ble Apex Court, and as there is no compliance, the applicant is entitled to be released on bail.

4. Learned APP strongly opposed the said application and submitted that applicant is running the company by name M/s I-World and insisted the complainant to invest the amount. The amount was transferred by the complainant on account of the company, and said amount is withdrawn by the present applicant. Thus, prima-facie involvement of the present applicant is revealed from the investigation papers. He submitted that, considering that the involvement of the present applicant is an economic offence, his custodial interrogation is required, and therefore, the application deserves to be rejected.

5. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers, from which it reveals that the applicant is the proprietor of the said I-World Company, wherein the complainant was

induced to invest the amount on the promise that he would get handsome returns after the investment, but on investment, the complainant has not received any returns, and therefore, he approached the police and lodged the report. As far as the alleged offences against the present applicant are concerned, which are punishable with imprisonment below 7 years. In view of Section 41 under Chapter V of the Code, which deals with the arrest of persons. Even for a cognizable offense, an arrest is not mandatory, as can be seen from the mandate of this provision.

6. The Hon'ble Apex Court in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation [2022 LiveLaw (SC) 577]***, wherein it is held that if the officer is satisfied that a person has committed a cognizable offense, 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 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.

7. This provision 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 provision and the offense alleged is more than seven years.

8. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offense. Resultantly, while considering the application for enlargement on bail, the court will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.

9. Despite the direction given by this Court, a notice was not given by the investigating officer to the present applicant under Section 41. The notice which is given by the investigating officer to the present applicant is under Section 41(A).

10. Section 41 deals with a notice of appearance before police officer, which specifically states that the police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

11. Thus, issuance of the notice under Section 41(A) itself shows that the investigating officer has not recorded any reasons for what purpose the arrest of the present applicant is required. It is evident that the investigating officer is not in need of the custodial interrogation of the present applicant, and therefore, he has issued a notice under Section 41(A). As observed by the Hon'ble Apex Court, non-compliance of Section 41 itself is sufficient to release the accused on bail. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order;

ORDER

- a] The application is allowed.
- b] In the event of arrest, in connection with Crime No.733/2023, registered with Police Station Ramnagar, District Wardha for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860, the applicant- **Pranil Pradip Bhoite** shall be released on anticipatory bail, on executing P.R.Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c] The applicant shall attend the concerned police station once in a week on Sunday between 10.00 a.m. to 01.00 p.m. and shall cooperate with the investigating agency.

- d] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- e] On failure to attend the concerned police station for the investigation purpose, a single incident of non-appearance would lead to the cancellation of bail.

The application stands **disposed of**.

[URMILA JOSHI-PHALKE, J.]