



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

CRIMINAL APPLICATION (ABA) NO. 55 OF 2024

Surendra S/o Tulshiram Singh Chauhan

..VS..

State of Maharashtra through P.S.O., P.S. Dhanaj, District Washim

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

Court's or Judge's orders

Mr. Akshay Sudame, Advocate for applicant.
Ms. H.S. Dhande, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : MARCH 08, 2024

Apprehending arrest at the hands of Police in connection with Crime No.378/2023 registered with Police Station Dhanaj, District Washim, for the offences punishable under Sections 468, 420, 465, 471 of the Indian Penal Code, 1860, the applicant approached to this Court for grant of pre-arrest bail.

2. The learned Counsel for the applicant Mr. Sudame submitted that as far as the allegation against the present applicant is on the basis of anonymous and pseudonymous complaint, alleging that the present applicant on the basis of fraud NET Certificate obtained the employment and duped the Government. On the basis of said report, the Police have registered the crime against the present applicant. He further submitted that the certificate of NET was not the requirement, the only requirement was candidate should qualify M.Phil which

the applicant is already having and, therefore, the immediate custodial interrogation of the present applicant is not required and he be released on pre-arrest bail.

3. Said application is strongly opposed by the State on the ground that on the basis of fraud NET Certificate the employment was obtained and therefore custodial interrogation of the present applicant is necessary for not only recovery of the NET Certificate but also to unearth the persons who are operating and preparing such bogus documents. It is recently reveals that there is a team of members who are working in the said field of preparing bogus and false documents, on the basis of which, several persons are being appointed on the aided post and because of which the State exchequer is put to loss and prays for rejection of the application.

4. Having heard the learned Counsel for the applicant and learned APP for the State and perused the investigation papers. After releasing the present applicant on ad-interim bail, he has already attended to the Police Station and co-operated the investigating agency.

5. In view of the observations of the Hon'ble Apex Court the case of ***Satender Kumar Antil V/s. Central Bureau of Investigation***, reported in ***2022 LiveLaw (SC) 577*** wherein the Hon'ble Apex Court has issued the

guidelines regarding the arrest wherein the punishment provided is less than seven years, as per the guidelines of the Hon'ble Apex Court Section 41 under Chapter V of the Code 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. 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. 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.

The Hon'ble Apex Court further held that this provision mandate 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.

6. The investigation papers shows that no notice is issued to the present applicant. It is repeatedly observed by this Court though directions of the Hon'ble Apex Court

regarding the compliance of Section 41 of the Code are there, the Investigating Officers are not following the due procedure. In the present case also no notice is given to the present applicant and there is no compliance of the directions of the Hon'ble Apex Court.

7. On perusal of the investigation papers, it reveals that during the investigation the Investigating Officer has collected various documents as well as recorded the various statements of the witnesses. As submitted by the learned Counsel for the applicant, it appears from the investigation papers that the NET Certificate was not requirement to apply for the post and the requirement of a degree of M.Phil, which the present applicant is already having. Considering the same, at this stage, immediate custodial interrogation of the present applicant is not required. In view of that *ad interim* protection granted to the applicant deserves to be confirmed.

8. Accordingly, I proceed to pass following order :

- i) In the event of arrest, in connection with Crime No.378/2023 registered with Police Station Dhanaj, District Washim, for the offences punishable under Sections 468, 420, 465, 471 of the Indian Penal Code, 1860, the applicant – **Surendra S/o Tulshiramsingh Chauhan** is released on anticipatory bail on executing P.R. bond in the sum of Rs.25,000/- with one sureties in the like amount.

- ii) 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 the investigating agency.
- iii) The applicant shall furnish his cell phone number and address with address proof before the investigating agency.
- iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

The Criminal Application is **disposed of**.

(URMILA JOSHI-PHALKE, J.)