



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

CRIMINAL APPLICATION (ABA) NO. 122/2024

Shri. Vikash s/o Vyankatesh Pande

Vs.

State of Maharashtra Through Police Station Officer, Ramtek

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. U.P. Dhoble, Advocate for applicant
Mr. N.S. Autkar, APP for Non-applicant

CORAM: URMILA JOSHI-PHALKE, J.

DATED : 19th MARCH, 2024

Apprehending the arrest in connection with Crime No. 154/2023, registered in Police Station Ramtek, District Nagpur under Sections 420 and 120-B of the Indian Penal Code, the applicant is seeking pre-arrest bail.

2. The learned counsel for the applicant submits that the accusations against the present applicant is that on the basis of the report lodged by Pandurang Kusanji Karemore on the allegation that the present applicant along with the co-accused on the pretext of giving admission to his son in M.B.B.S. course obtained an amount of Rs.9,75,000/- and cheated the applicant. On the basis of the report of the complainant, police have registered the crime.

3. The learned counsel for applicant submits that as far as the amount of Rs.1,25,000/- which was deposited through his account, which is withdrawn and hand over to the other co-accused. The co-accused is already released on bail. The learned counsel further submitted that the applicant has co-operated with the investigating agency. Now the investigation is practically completed and custodial interrogation of the present applicant is not necessary. In view of the above, interim protection deserves to be granted to the applicant.

4. The learned APP strongly opposed the application and submitted that the account statement which shows not only an amount of Rs.1,20,000/-, but the present applicant has received total amount of Rs.6,75,000/-. The said amount is yet to be recovered from the present applicant. The custodial interrogation of the applicant is required. In view of that, the application deserves to be rejected.

5. Having heard the learned counsel for the applicant and learned APP for the State, perused the recitals of the FIR and order passed by the learned trial Court while releasing the co-accused on bail. As far as the present applicant is concerned, which shows that he has received some

amount from the complainant. The account statement shows that the amount is received by the present applicant. The offence which is registered against the present applicant is under Section 420 of the Indian Penal Code for which punishment upto 7 years is prescribed.

6. The learned APP was asked to seek instructions, whether notice under Section 41-A of the Code of Criminal Procedure is issued. On instructions, he submitted that no such notice is issued to the present applicant. Though he has opposed the application, but on instructions of the Investigating Officer, he submitted that after releasing the present applicant on ad-interim bail, co-accused had attended the Police Station. It also reveals that the applicant has co-operated with the investigating agency and is attending the Police Station. As far as notice under Section 41-A of the Code of Criminal Procedure is concerned, which is a mandate of that Section the Hon'ble Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and Anr.** reported in **2022 LiveLaw (SC) 577**, wherein it is held that Section 41 Chapter V of the Code of Criminal Procedure deals with the arrest of persons. Even for a cognizable offence, an arrest is not mandatory as can be seen from the mandate of

this provision. If the Officer has 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 committing of any further offence, 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. One more ground on which an arrest may be necessary is when his / her presence is required after arrest for production before the Court and the same cannot be assured.

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 procedure when the offence alleged is more than seven years, among other reasons. The consequence of non-compliance with Section 41 of the Code of Criminal Procedure shall certainly inure to the benefit of the person suspected of the offence.

7. In view of the observations, it revealed that the Investigating Officer has not complied with these provisions. Considering the fact that now the applicant is attending the Police Station and co-operating with the investigating agency, his physical custody is not required. In view of that ad-interim protection deserves to be confirmed accordingly. In view of the above, I pass the following order.

ORDER

I. In the event of arrest, in connection with Crime No.154/2023, registered with Police Station Ramtek, District Nagpur under Section 420 and 120-B of the Indian Penal Code, the applicant shall be released on anticipatory bail on executing PR bond of Rs.25,000/- with surety in the like amount.

II. The applicant shall co-operate with the investigating agency.

III. The applicant shall not induce, threat or promise to any witnesses, who are acquainted with the facts of the case in any manner.

IV. The applicant shall furnish his cell phone number and address with address proof before the Investigating Officer.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)